Volume 34, Number 1, May 29, 2026

Pages 1-53

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.

- **LICENSING—DRIVER'S LICENSE SUSPENSION—REFUSAL TO SUBMIT TO BREATH TEST—LAWFULNESS OF STOP—PRIVATE PROPERTY. A deputy who was summoned to the scene of a one-car accident involving injuries on a private roadway had jurisdiction to investigate and arrest the licensee on private property after noticing indicia of impairment sufficient to create reasonable suspicion that the licensee was driving under influence.** *SALLOUM v. DEPARTMENT OF HIGHWAY SAFETY AND MOTOR VEHICLES. Circuit Court, Thirteenth Judicial Circuit (Appellate) in and for Hillsborough County. Filed March 2, 2026. Full Text at Circuit Courts-Appellate Section, page 2a.*

- **ATTORNEY'S FEES—DECLARATORY JUDGMENT—INSURANCE—PERSONAL INJURY PROTECTION. Insureds are entitled to attorney's fees and costs incurred in a declaratory action filed after the insurer makes a total coverage denial of a claim. An insurer's total coverage denial of a claim, followed by post-suit payment, falls squarely within the scope of Section 86.121, Florida Statutes, and establishes the insured's entitlement to attorney's fees and costs.** *LOUISSAINT v. UNITED AUTOMOBILE INSURANCE COMPANY. County Court, Ninth Judicial Circuit in and for Orange County. Filed February 25, 2026. Full Text at County Courts Section, page 22b. SYLVERA v. UNITED AUTOMOBILE INSURANCE COMPANY. County Court, Ninth Judicial Circuit in and for Orange County. Filed March 4, 2026. Full Text at County Courts Section, page 23a.*

- **TRAFFIC INFRACTIONS—RED-LIGHT CAMERA VIOLATIONS—CONSTITUTIONALITY OF STATUTE—DUE PROCESS. Although nominally civil in nature, traffic infraction proceedings are quasi-criminal and subject to the procedural due process protections applicable in criminal cases. A statute that designates an owner of a vehicle involved in a red-light camera violation as presumptively responsible for a violation and places a duty on the owner to produce affirmative proof of another's guilt violates the procedural due process guarantees of state and federal constitutions by creating a mandatory rebuttable presumption that impermissibly shifts the state's burden of proof to the defendant.** *STATE OF FLORIDA v. MCFADDEN. County Court, Seventeenth Judicial Circuit in and for Broward County. Filed March 3, 2026. Full Text at County Courts Section, page 38a.*

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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

Page prefixes in the subject matter index and tables identify the courts in the following manner:

10CIR 25	**Circuit Court - Appellate** (**Bold** type) (10th Circuit, page 25)
20CIR 10	Circuit Court - Original (20th Circuit, page 10)
CO	County Court
M	Miscellaneous Reports

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Bold denotes decision by circuit court in its appellate capacity.

ADMINISTRATIVE LAW
Department of Highway Safety and Motor Vehicles—Licensing—Driver's license—see, LICENSING—Driver's license
Licensing—Driver's license—see, LICENSING—Driver's license

ALIENS
Minors—Undocumented—Child custody—Temporary custody by extended family—Denial—Relief directed at obtaining immigration benefits rather than at present custodial necessity 17CIR 12c

ATTORNEY'S FEES
Declaratory judgments—Insurance—Coverage dispute—Prevailing party—Action resulting in payment of disputed benefits CO 22b; CO 23a; CO 33a
Declaratory judgments—Insurance—Prevailing party—Action resulting in payment of disputed benefits CO 22b; CO 23a; CO 33a
Declaratory judgments—Insurance—Prevailing party—Confession of judgment—Post-suit payment of benefits—Prior total coverage denial of a claim CO 22b; CO 23a; CO 33a
Declaratory judgments—Insurance Action to determine insurance coverage "after total coverage denial of a claim"—Striking—Premature motion—Absence of judgment or decree CO 36a
Insurance—see, INSURANCE—Attorney's fees
Partition of property—Services beneficial to partition—Defense of counterclaim—Defense related to credits or setoffs after ownership had been established by agreement 2CIR 10a
Partition of property—Services beneficial to partition—Discovery costs 2CIR 10a
Prevailing party—Confession of judgment—Insurance—Declaratory judgments—Post-suit payment of benefits—Prior total coverage denial of a claim CO 22b; CO 23a; CO 33a
Sanctions—Fraud on court CO 17a

CHILD CUSTODY
Aliens—Undocumented minor—Temporary custody by extended family—Denial—Relief directed at obtaining immigration benefits rather than at present custodial necessity 17CIR 12c
Temporary custody by extended family—Undocumented minor—Denial—Relief directed at obtaining immigration benefits rather than at present custodial necessity 17CIR 12c

CIVIL PROCEDURE
Affirmative defenses—Amendment—Prejudice— Relevance—Procedural context CO 35a
Affirmative defenses—Amendment—Timeliness of motion CO 35a
Affirmative defenses—Striking—Conclusory statements CO 32a
Affirmative defenses—Sufficiency of pleading CO 51a
Amendments—Answer—Affirmative defenses—Prejudice— Relevance—Procedural context CO 35a
Amendments—Answer—Affirmative defenses—Timeliness of motion CO 35a
Answer—Amendment—Affirmative defenses—Prejudice—Relevance—Procedural context CO 35a
Answer—Amendment—Affirmative defenses—Timeliness of motion CO 35a
Default—Damages—Unliquidated—Notice and opportunity to be heard 2CIR 11a
Dismissal—Fraud on court CO 15a; CO 17a
Fraud on court—Sanctions—Dismissal CO 15a; CO 17a
Fraud on court—Sanctions—Specification and calculation CO 17a
Sanctions—Fraud on court—Specification and calculation CO 17a

CIVIL PROCEDURE (continued)
Service of process—Substitute—Co-resident—Defendant not residing at address at time of service CO 21a
Summary judgment—Opposition—Sufficiency—Failure to rebut supporting affidavits CO 34a
Summary judgment—Response—Absence CO 43a; CO 52a
Summary judgment—Support—Affidavit—Personal knowledge CO 34a
Trial—Bifurcation—Legal and equitable claims 12CIR 12b

CONSTITUTIONAL LAW
Criminal proceedings—Shifting of burden of proof—Quasi-criminal traffic infractions—Red-light camera violations—Requirement that vehicle owner rebut mandatory presumption of responsibility CO 38a
Due process—Procedural—Red-light camera statute CO 38a
Due process—Substantive—Red-light camera statute CO 38a

CONTRACTS
Sales—Acceptance—Revocation—Trial—Bifurcation of equital claims from legal claims 12CIR 12b
Warranties—Magnuson Moss Warranty Act—Defenses—Striking—Conclusory statements CO 51a
Warranties—Motor vehicles—Defenses—Striking—Conclusory statements CO 32a

COSTS
Prevailing party—Partition of property—Services beneficial to partition—Discovery of defendant's financial information 2CIR 10a

CREDITORS' RIGHTS
Garnishment—Exemptions—Objection—Denial—Lack of personal knowledge CO 22a
Garnishment—Exemptions—Objection—Denial—Objection to an exemption that was not claimed CO 22a

CRIMINAL LAW
Driving under influence—Urine test—Evidence—Relevance—Inconsistencies between signs of impairment and breath alcohol level CO 36b
Evidence—Driving under influence—Urine test—Relevance—Inconsistencies between signs of impairment and breath alcohol level CO 36b
Evidence—Urine test—Relevance—Inconsistencies between signs of impairment and breath alcohol level CO 36b
Search and seizure—Stop—Vehicle—Traffic infraction—Stopping officer's lack of knowledge or ability to remember number of statute violated—Relevance—Undisputed evidence that driving pattern violated specific statute 18CIR 14a
Search and seizure—Vehicle—Stop—Traffic infraction—Stopping officer's lack of knowledge or ability to remember number of statute violated—Relevance—Undisputed evidence that driving pattern violated specific statute 18CIR 14a
Urine test—Evidence——Relevance—Inconsistencies between signs of impairment and breath alcohol level CO 36b

DECLARATORY JUDGMENTS
Attorney's fees—Insurance—Action to determine insurance coverage "after total coverage denial of a claim" CO 22b; CO 23a; CO 33a
Attorney's fees—Insurance—Action to determine insurance coverage "after total coverage denial of a claim"—Striking—Premature motion—Absence of judgment or decree CO 36a
Attorney's fees—Insurance—Declaratory judgments—Prevailing party—Confession of judgment—Post-suit payment of benefits—Prior total coverage denial of a claim CO 22b; CO 23a; CO 33a
Attorney's fees—Prevailing party—Insurance—Coverage dispute—Action resulting in payment of disputed benefits CO 22b; CO 23a; CO 33a

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EVIDENCE

Exclusion—Motion in limine—Sufficiency of motion—Boilerplate motion asking court to remind opposing counsel not to violate evidence code 2CIR 12a

GARNISHMENT

Exemptions—Objection—Denial—Lack of personal knowledge CO 22a
Exemptions—Objection—Denial—Objection to an exemption that was not claimed CO 22a

INJUNCTIONS

State universities—Trustees—Challenge to trustees' selection and compensation of university president 2CIR 8a

INSURANCE

Application—Misrepresentations—Automobile insurance—Non-driver resident—Application relied upon by insurer never seen by insured CO 34a
Application—Misrepresentations—Automobile insurance—Non-driver resident—Online quote tool soliciting names of drivers of vehicles, not household residents CO 34a
Application—Misrepresentations—Automobile insurance—Rescission of policy—Summary judgment—Opposing affidavit—Failure to rebut supporting affidavits CO 34a
Application—Misrepresentations—Automobile insurance—Rescission of policy—Summary judgment—Supporting affidavit— Underwriter—Lack of personal knowledge CO 34a
Attorney's fees—Declaratory judgments—Prevailing party—Confession of judgment—Post-suit payment of benefits—Prior total coverage denial of a claim CO 22b; CO 23a; CO 33a
Attorney's fees—Declaratory judgments—Action to determine insurance coverage "after total coverage denial of a claim"—Striking—Premature motion—Absence of judgment or decree CO 36a
Attorney's fees—Declaratory judgments—Prevailing party—Action resulting in payment of disputed benefits CO 22b; CO 23a; CO 33a
Attorney's fees—Personal injury protection—Prevailing party—Confession of judgment—Post-suit payment of benefits—Prior total coverage denial of a claim CO 22b; CO 23a; CO 33a
Automobile—Application—Misrepresentations—Non-driver resident—Application relied upon by insurer never seen by insured CO 34a
Automobile—Application—Misrepresentations—Non-driver resident—Materiality—Increase in premium had disclosure been made—Failure to demonstrate CO 34a
Automobile—Application—Misrepresentations—Non-driver resident—Online quote tool soliciting names of drivers of vehicles, not household residents CO 34a
Automobile—Application—Misrepresentations—Rescission of policy—Summary judgment—Opposing affidavit—Failure to rebut supporting affidavits CO 34a
Automobile—Application—Misrepresentations—Rescission of policy—Summary judgment—Supporting affidavit—Underwriter—Lack of personal knowledge CO 34a
Automobile—Misrepresentations—Application—Non-driver resident—Application relied upon by insurer never seen by insured CO 34a
Automobile—Misrepresentations—Application—Non-driver resident—Materiality—Increase in premium had disclosure been made—Failure to demonstrate CO 34a
Automobile—Misrepresentations—Application—Non-driver resident—Online quote tool soliciting names of drivers of vehicles, not household residents CO 34a
Automobile—Misrepresentations—Application—Rescission of policy—Summary judgment—Opposing affidavit—Failure to rebut supporting affidavits CO 34a
Automobile—Misrepresentations—Application—Rescission of policy—Summary judgment—Supporting affidavit—Underwriter—Lack of personal knowledge CO 34a

INSURANCE (continued)

Automobile—Rescission of policy—Misrepresentations on application—Non-driver resident—Application relied upon by insurer never seen by insured CO 34a
Automobile—Rescission of policy—Misrepresentations on application—Non-driver resident—Materiality—Increase in premium had disclosure been made—Failure to demonstrate CO 34a
Automobile—Rescission of policy—Misrepresentations on application—Non-driver resident—Online quote tool soliciting names of drivers of vehicles, not household residents CO 34a
Automobile—Rescission of policy—Misrepresentations on application—Rescission of policy—Summary judgment—Opposing affidavit—Failure to rebut supporting affidavits CO 34a
Automobile—Rescission of policy—Misrepresentations on application—Rescission of policy—Summary judgment—Supporting affidavit—Underwriter—Lack of personal knowledge CO 34a
Declaratory judgments—Attorney's fees—Prevailing party—Action resulting in payment of disputed benefits CO 22b; CO 23a; CO 33a
Homeowners—Insured's action against insurer—Dismissal—Fraud on court—Attorney's attempt to represent insured without insured's knowledge or consent CO 15a; CO 17a
Homeowners—Insured's action against insurer—Dismissal—Fraud on court—Attorney's attempt to represent insured without insured's knowledge or consent—Sanctions—Specification and calculation CO 17a
Life—Life expectancy assessments—Audits submitted to Office of Insurance Regulation by life expectancy provider—Public records—Exemption—Trade secrets 2CIR 5a
Misrepresentations—Application—Automobile insurance—Non-driver resident—Application relied upon by insurer never seen by insured CO 34a
Misrepresentations—Application—Automobile insurance—Non-driver resident—Materiality—Increase in premium had disclosure been made—Failure to demonstrate CO 34a
Misrepresentations—Application—Automobile insurance—Non-driver resident—Online quote tool soliciting names of drivers of vehicles, not household residents CO 34a
Misrepresentations—Application—Automobile insurance—Rescission of policy—Summary judgment—Opposing affidavit—Failure to rebut supporting affidavits CO 34a
Misrepresentations—Application—Automobile insurance—Rescission of policy—Summary judgment—Supporting affidavit—Underwriter—Lack of personal knowledge CO 34a
Personal injury protection—Attorney's fees—see, INSURANCE—Attorney's fees
Personal injury protection—Coverage—Conditions precedent—Examination under oath, see, Personal injury protection—Examination under oath
Personal injury protection—Coverage—Denial—Exhaustion of policy limits—Gratuitous payments CO 48a; CO 49a
Personal injury protection—Coverage—Denial—Exhaustion of policy limits—Gratuitous payments—Unbundled code not compensable under Medicare or workers' compensation fee schedules CO 49a
Personal injury protection—Coverage—Denial—Exhaustion of policy limits—Payments that were improper under policy limitations and exclusions CO 52b
Personal injury protection—Coverage—Emergency medical condition—Denial—Exhaustion of policy limits—Gratuitous payments CO 48a
Personal injury protection—Coverage—Medical expenses— Reimbursement—Unbundled service CO 50a
Personal injury protection—Coverage—Medical expenses— Reimbursement rate—Participating physicians fee schedule—Code having RVU under Medicare Part B CO 41a;CO 43a; CO 44a; CO 44b; CO 46a; CO 50a
Personal injury protection—Coverage—Medical expenses— Reimbursement rate—Relative value units—Applicability CO 41a; CO 43a; CO 44a; CO 44b; CO 46a; CO 50a

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INSURANCE (continued)

Personal injury protection—Coverage—Medical expenses— Reimbursement rate—Unattended electrical stimulation—Code no longer recognized by Medicare Part B—Service covered under different code CO 30a
Personal injury protection—Coverage—Summary judgment CO 52a
Personal injury protection—Coverage—Summary judgment—Response—Absence CO 43a; CO 52a
Personal injury protection—Examination under oath—Failure to comply—Appearance without requested documents CO 24a
Personal injury protection—Examination under oath—Failure to comply—Duty of insurer to reschedule EUO or move to compel answers following noncompliance CO 24a
Personal injury protection—Examination under oath—Failure to comply—Failure to provide clear information regarding treatment and prior accidents CO 24a
Personal injury protection—Examination under oath—Failure to comply—Failure to respond to questions—Relevance of questions—Determination by judge CO 24a
Personal injury protection—Examination under oath—Requirement to "submit to" and "complete" EUO and provide requested documents—Noncompliance with statute CO 24a
Personal injury protection—Medical provider's action against insurer—Venue—Transfer—Convenience of parties or witnesses or interest of justice CO 29a
Post-loss obligations—Examination under oath—Failure to comply—Appearance without requested documents CO 24a
Post-loss obligations—Examination under oath—Failure to comply—Duty of insurer to reschedule EUO or move to compel answers following noncompliance CO 24a
Post-loss obligations—Examination under oath—Failure to comply—Failure to provide clear answers CO 24a
Post-loss obligations—Examination under oath—Failure to comply—Failure to respond to questions—Relevance of questions—Determination by judge CO 24a
Post-loss obligations—Examination under oath—Requirement to "submit to" and "complete" EUO and provide requested documents—Noncompliance with statute CO 24a
Rescission of policy—Automobile insurance—Misrepresentations on application—Non-driver resident—Application relied upon by insurer never seen by insured CO 34a
Rescission of policy—Automobile insurance—Misrepresentations on application—Non-driver resident—Materiality—Increase in premium had disclosure been made—Failure to demonstrate CO 34a
Rescission of policy—Automobile insurance—Misrepresentations on application—Non-driver resident—Online quote tool soliciting names of drivers of vehicles, not household residents CO 34a
Rescission of policy—Automobile insurance—Misrepresentations on application—Summary judgment—Opposing affidavit—Failure to rebut supporting affidavits CO 34a
Rescission of policy—Automobile insurance—Misrepresentations on application—Summary judgment—Supporting affidavit—Underwriter—Lack of personal knowledge CO 34a
Venue—Transfer—Personal injury protection—Medical provider's action against insurer—Convenience of parties or witnesses or interest of justice CO 29a

JURISDICTION

Service of process—Substitute—Co-resident—Defendant not residing at address at time of service CO 21a

JURY TRIAL

Civil—Bifurcation—Legal and equitable claims 12CIR 12b

LANDLORD-TENANT

Eviction—Notice—Defects—Amounts other than rents—Monthly installments for additional security deposit CO 53a

LANDLORD-TENANT (continued)

Eviction—Public housing—Noncompliance with lease—Non-renewal after expiration of lease—Good cause—Landlord's acceptance of subsidy in form of section 26 tax break rather than section 8 CO 31a
Eviction—Public housing—Noncompliance with lease—Waiver—Failure to file action within 45 days of notice of noncompliance—Applicability of statute—Non-renewal after expiration of lease CO 31a
Eviction—Public housing—Notice—Defects—Amounts other than rents—Monthly installments for additional security deposit CO 53a
Eviction—Waiver—Acceptance of rent CO 32b
Eviction—Waiver—Failure to file action within 45 days of notice of noncompliance CO 31a
Public housing—Eviction—Notice—Defects—Amounts other than rents—Monthly installments for additional security deposit CO 53a
Public housing—Non-renewal of lease—Good cause CO 31a
Public housing—Noncompliance with lease—Non-renewal after expiration of lease—Good cause—Landlord's acceptance of subsidy in form of section 26 tax break rather than section 8 CO 31a
Public housing—Noncompliance with lease—Waiver—Failure to file action within 45 days of notice of noncompliance—Applicability of statute—Non-renewal after expiration of lease CO 31a

LICENSING

Driver's license—Revocation—Reinstatement—Early reinstatement—Denial—Inability to safely operate motor vehicle notwithstanding hardship needs—Sufficiency of evidence **12CIR 1a**
Driver's license—Suspension—Refusal to submit to blood, breath or urine test—Implied consent warning—Evidence that warning was read to licensee—Video—Necessity **13CIR 2a**
Driver's license—Suspension—Refusal to submit to blood, breath or urine test—Implied consent warning—Evidence that warning was read to licensee—Written signed implied consent warning **13CIR 2a**
Driver's license—Suspension—Refusal to submit to blood, breath or urine test—Lawfulness of stop—Officer acting outside jurisdiction—Private property—Investigation of single car accident involving injuries on private roadway **13CIR 2a**

MORTGAGES

Foreclosure—Defenses—Noncompliance with HUD regulations—Remedy 2CIR 9a
Foreclosure—Defenses—Noncompliance with HUD regulations—Standing—Non-parties to mortgage 2CIR 9a

PUBLIC RECORDS

Exemptions—Trade secrets—Factors—Extensive discussion 2CIR 5a
Exemptions—Trade secrets—Life expectancy provider—Audits submitted to Office of Insurance Regulation for purpose of complying with regulatory statute—Disclosure to viatical settlement provider—Denial—Extensive discussion 2CIR 5a

REAL PROPERTY

Partition—Attorney's fees—Services beneficial to partition—Defense of counterclaim—Defense related to credits or setoffs after ownership had been established by agreement 2CIR 10a
Partition—Attorney's fees—Services beneficial to partition—Discovery costs 2CIR 10a
Partition—Costs—Services beneficial to partition—Discovery of defendant's financial information 2CIR 10a

SCHOOLS

Colleges and universities—President—Selection and compensation—State university—Challenge—Standing—Members of public—Individuals with ties to university—Alleged injuries either speculative or harmful to university and state 2CIR 8a
Colleges and universities—Trustees—Breach of fiduciary duties—Standing—Members of public 2CIR 8a

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TORTS

Fiduciaries—Breach of duty—Trustees of state university—Standing—Members of public 2CIR 8a

TRAFFIC INFRACTIONS

Quasi-criminal infraction—Red-light camera violation CO 38a
Red-light cameras—Constitutionality of statute—Due process—Procedural CO 38a
Red-light cameras—Constitutionality of statute—Due process—Substantive CO 38a
Red-light cameras—Constitutionality of statute—Shifting of burden of proof—Requirement that vehicle owner rebut mandatory presumption of responsibility CO 38a
Red-light cameras—Violation—Due process—Procedural—Protections applicable in criminal cases—Applicability—Quasi-criminal proceeding CO 38a

UNIFORM COMMERCIAL CODE

Sales—Acceptance—Revocation—Bifurcation of equitable claims from legal claims 12CIR 12b

VENUE

Insurance—Personal injury protection—Medical provider's action against insurer—Transfer of venue—Convenience of parties or witnesses or interest of justice CO 29a
Transfer—Convenience of parties or witnesses or interest of justice—Insurance—Personal injury protection—Medical provider's action against insurer —CO 29a

* * *

TABLE OF CASES REPORTED

Albert v. Florida A&M University Board of Trustees 2CIR 8a
Back to Mind Chiropractic v. Star Casualty Insurance Co. CO 52a
Benjamin v. Besley 2CIR 10a
Chiropractic Clinics of South Florida, P.L. v. Infinity Indemnity Insurance Co. CO 49a
Clearcare, LLC (Ayeni) v. Security National Insurance Co. CO 44a
Clearcare, LLC (Douse) v. Security National Insurance Co. CO 44b
Clearcare, LLC (Henderson) v. GEICO General Insurance Co. CO 43a
Clearcare, LLC (Martinez) v. Security National Insurance Co. CO 41a
Clearcare, LLC (Prado) v. Mercury Indemnity Company of America CO 48a
Conway v. Florida Department of Highway Safety and Motor Vehicles **12CIR 1a**
Diaz v. Diaz 17CIR 12cDixon v. Direct General Insurance Co. CO 34a
Dr. Chris Thompson, DC, PA v. MGA Insurance Company, Inc. CO 29a
E.D. v. A.D. 17CIR 12c
Elite Spine Group, Inc. v. United Automobile Insurance Co. CO 52b
Equable Ascent Financial, LLC v. Dorsey CO 22a
Gina Medical Center, Inc. v. State Farm Fire and Casualty Insurance Co. CO 24a
Jimenez v. Direct General Insurance Co. CO 36a
JP Morgan Chase Bank, N.A. v. Fehnel CO 21a
Kahin v. Zag Transport, Inc. 2CIR 12a
Lapetus Solutions, Inc. v. Florida Office of Insurance Regulation 2CIR 5a
Louissaint v. United Automobile Insurance Co. CO 22b
Lyall v. Edie CO 53a
Mevs v. Weinberger CO 32b
MRI Associates of Palm Barbor (Hall) v. GEICO General Ins. Co. CO 35a
Network Chiropractic Consultants, Inc. (Analange) v. Progressive American Insurance Co. CO 30a
Persaud v. Gulf Coast Auto Brokers, Inc. 12CIR 12b
Pestana v. Toyota Motor Sales U.S.A., Inc. CO 32a

TABLE OF CASES REPORTED (continued)

Puma v. Progressive Select Insurance Co. CO 33a
Salloum v. Department of Highway Safety and Motor Vehicles **13CIR 2a**
Sanders v. Volkswagen Group of America, Inc. CO 51a
SOS Medical Center (Ulysse) v. Infinity Auto Insurance Co. CO 50a
State v. Brown 18CIR 14a
State v. McFadden CO 38a
State v. Restrepo CO 36b
Sylvera v. United Automobile Insurance Co. CO 23a
Thompson, DC, PA v. MGA Insurance Company, Inc. CO 29a
Total Health Associates, LLC v. Safeco Insurance Company of Illinois CO 46a
US Bank National Association v. Jackson 2CIR 11a
Wells Fargo Bank N.A. v. Bradley 2CIR 9a
West Brickell View, Ltd. v. Garrido CO 31a
Zuberka v. American Integrity Insurance Co. of Florida CO 15a
Zuberka v. American Integrity Insurance Co. of Florida CO 17a

* * *

TABLE OF STATUTES CONSTRUED

Florida Statutes and Rules of Procedure construed in opinions reported in this issue.

FLORIDA STATUTES

39.5075 Diaz v. Diaz 17CIR 12c
47.122 Chris Thompson DCPA v. MGA Insurance Company, Inc. CO 29a
48.031 JP Morgan Chase Bank, N.A. v. Fehnel CO 21a
64.081 Benjamin v. Besley 2CIR 10a
77.041(3) Equable Ascent Financial, LLC v. Dorsey CO 22a
83.56(5)(c) West Brickell View Ltd v. Garrido CO 31a
83.57 Mevs v. Weinberger CO 32b
83.575 West Brickell View Ltd v. Garrido CO 31a
86.011 Clearcare LLC (Douse)v. Security National Insurance Co. CO 44a; CO 44b
86.101 Puma v. Progressive Select Insurance Co. CO 33a
86.121 Louissaint v. United Automobile Insurance Co. CO 22b
86.121(1) Jimenez v. Direct General Insurance Co. CO 36a; 86.121(1) Puma v. Progressive Select Insurance Co. CO 33a
90.403 State v. Restrepo CO 36b
119.0715(1) Lapetus Solutions, Inc. v. Florida Office of Insurance Regulation 2CIR 5a
316.006 Salloum v. Department of Highway Safety and Motor Vehicles **13CIR 2a**
316.0083 State v. McFadden CO 38a
316.074 State v. McFadden CO 38a
316.075 State v. McFadden CO 38a
316.090 State v. Brown 18CIR 14a
318.14(6) State v. McFadden CO 38a
322.263 Conway v. Florida Department of Highway Safety and Motor Vehicles **12CIR 1a**
322.27(3) State v. McFadden CO 38a
322.271(c) Conway v. Florida Department of Highway Safety and Motor Vehicles **12CIR 1a**
624.4213 Lapetus Solutions, Inc. v. Florida Office of Insurance Regulation 2CIR 5a
626.9911 Lapetus Solutions, Inc. v. Florida Office of Insurance Regulation 2CIR 5a
626.99175(5) Lapetus Solutions, Inc. v. Florida Office of Insurance Regulation 2CIR 5a
627.608 Persaud v. Gulf Coast Auto Brokers, Inc. 12CIR 12b
627.6131(2) Louissaint v. United Automobile Insurance Co. CO 22b
627.736 Louissaint v. United Automobile Insurance Co. CO 22b
627.736(1) Clearcare LLC (Prado) v. Mercury Indemnity Co. of America CO 48a
627.736(15) Puma v. Progressive Select Insurance Co. CO 33a

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TABLE OF STATUTES CONSTRUED (continued)

FLORIDA STATUTES (continued)

627.736(5)(a) Clearcare LLC (Martinez) v. Security National Insurance Co. CO 41a; Clearcare LLC (Ayeni) v. Security National Insurance Co. CO 44a; Clearcare LLC (Douse) v. Security National Insurance Co. CO 44b; Total Health Associates, LLC v. Safeco Ins. Co. of Illinois CO 46a; Clearcare LLC (Prado) v. Mercury Ind. Co. of America CO 48a; Chiropractic Clinics of South Florida, P.L. v. Infinity Ind. Insurance Co. CO 49a; SOS Medical Center (Ulysse) v. Infinity Auto Ins. Co. CO 50a

627.736(5)(b) Clearcare LLC (Prado) v. Mercury Ind. Co. of America CO 48a;SOS Medical Center (Ulysse) v. Infinity Auto Ins. Co. CO 50a

627.736(6) Gina Medical Center, Inc. v. State Farm Fire & Casualty Insurance Co. CO 24a

688.002(4) Lapetus Solutions, Inc. v. Florida Office of Insurance Regulation 2CIR 5a

751.03 Diaz v. Diaz 17CIR 12c

768.79(1) Zuberka v. American Integrity Insurance Co. of Florida CO 17a

RULES OF CIVIL PROCEDURE

1.110(d) Pestana v. Toyota Motor Sales U.S.A., Inc. CO 32a; Samders v. Volkswagen Group of America Inc. CO 51a

1.140(f) Samders v. Volkswagen Group of America Inc. CO 51a

1.270(b) Persaud v. Gulf Coast Auto Brokers, Inc. 12CIR 12b

1.370 Clearcare LLC (Henderson) v. GEICO General Insurance Co. CO 43a

1.510 Clearcare LLC (Henderson) v. GEICO General Insurance Co. CO 43a

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TABLE OF CASES TREATED

Case Treated / In Opinion At

Allstate Indemnity Co. v. Gady Abramson, D.C., P.A., 403 So.3d 1021 (Fla. 3DCA 2024)/CO 46a

Casiano v. Casiano, 370 So.3d 991 (Fla. 5DCA 2023)/2CIR 10a

Cauble v. Kaczmarski, 421 So.3d 776 (Fla. 3DCA 1025)/2CIR 10a

DeSantis v. Florida Education Association, 306 So.3d 1202 (Fla. 1DCA 2020)/2CIR 8a

Diaz v. Sec. Union Title Ins. Co., 639 So.3d 1004 (Fla. 3DCA 1994)/ 2CIR 10a

Estrich v. State, 995 So.2d 613 (Fla. 4DCA 2008)/CO 36b

Fernandez-Fox v. Reyes, 79 So.3d 895 (Fla. 5DCA 2012)/2CIR 10a

L. v. Department of Children & Families, 169 So.3d 1244 (Fla. 4DCA 2015)/17CIR 12c

Laurencio v. Deutsche Bank National Trust Co., 65 So.3d 1190 (Fla. 2DCA 2011)/CO 35a

TABLE OF CASES TREATED (continued)

Lloyd S. Meisels, P.A. v. Dobrofsky, 341 So.3d 1131 (Fla. 4DCA 2022)/CO 43a; CO 46a

Managed Care of N.A., Inc. v. Florida Healthy Kids Corp., 268 So.3d 856 (Fla. 1DCA 2019)/2CIR 5a

Martinez v. Bank of N.Y. Mellon, 198 So.3d 911 (Fla. 3DCA 2016)/ CO 17a

McCall v. Scott, 199 So.3d 359 (Fla. 1DCA 2016)/2CIR 8a

Medical Center of Palm Beaches v. USAA Cas. Insurance Co., 202 So.3d 88 (Fla. 4DCA 2016)/CO 48a

Meisels, P.A. v. Dobrofsky, 341 So.3d 1131 (Fla. 4DCA 2022)/CO 43a; CO 46a

MRI Associates of Tampa, Inc. v. State Farm Mutual Automobile Insurance Co., 334 So.3d 577 (Fla. 2021)/CO 46a

Munroe v. Birdsey, 136 So. 886 (Fla. 1931)/2CIR 10a

New River Yachting Center, Inc. v. Bacchiocchi, 407 So.2d 607 (Fla. 4DCA 1981)/CO 35a

O.I.C.L. v. Department of Children & Families, 169 So.3d 1244 (Fla. 4DCA 2015)/17CIR 12c

Office of Insurance Regulation v. State Farm Florida Insurance Co., 213 So.3d 1104 (Fla. 1DCA 2017)/2CIR 5a

Premier Lab Supply, Inc. v. Chemplex Indus., Inc., 10 So.3d 202(Fla. 4DCA 2009)/2CIR 5a

Progressive Select Ins. Co. v. Dr. Rahat Faderani, DO, MPH, P.A., 330 So.3d 928 (Fla. 4DCA 2021)/CO 49a; CO 50a

Quality Engineered Installation, Inc. v. Higley S., Inc., 670 So.2d 929 (Fla. 1996)/CO 17a

Rouffe v. CitiMortgage, Inc., 241 So.3d 870 (Fla. 4DCA 2018)/2CIR 9a

Shurman v. Atlantic Mortgage & Inv. Corp., 795 So.2d 952 (Fla. 2001)/ CO 21a

State ex rel. Merritt v. Heffernan, 195 So. 145 (Fla. 1940)/CO 21a

State v Weitz, 500 So.2d 657 (Fla. 1DCA 1986)/CO 36b

State v. McClain, 525 So.2d 420 (Fla. 1988)/CO 36b

State v. Sercey, 825 So.2d 959 (Fla. 1DCA 2002)/CO 34a

State v. Tagner, 673 So.2d 57 (Fla. 4DCA 1996)/CO 36b

State v. Young, 971 So.2d 968 (Fla. 4DCA 2008)/18CIR 14a

Sunrise Chiropractic and Rehabilitation Center (Louis) v. Security Nat'l Ins. Co., 321 So.3d 786 (Fla. 4DCA 2021)/CO 41a; CO 44a; CO 44b; CO 46a; CO 50a

Torres v. Shaw, 345 So.3d 970 (Fla. 1DCA 2022)/2CIR 8a

United Automobile Insurance Co. v. Buchalter, 344 So.3d 474 (Fla. 4DCA 2022)/CO 44b

Zink v. State, 448 So.2d 1196 (Fla. 1DCA 1984)/**13CIR 2a**

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Volume 34, Number 1
May 29, 2026
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CIRCUIT COURTS—APPELLATE

Licensing—Driver's license—Revocation—Early reinstatement—Denial—Hearing officer did not depart from essential requirements of law in denying application for hardship reinstatement upon determining that licensee could not be trusted to safely operate motor vehicle notwithstanding his hardship needs—Hearing officer's determination is supported by competent substantial evidence, including record showing multiple prior suspensions for refusing DUI testing, repeated courses at DUI schools, a withhold of adjudication for leaving scene of crash resulting in injury, and prior violations for speeding and failure to obey traffic signs

CHRISTOPHER ROBERT CONWAY, Petitioner, v. FLORIDA DEPARTMENT OF HIGHWAY SAFETY AND MOTOR VEHICLES, Respondent. Circuit Court, 12th Judicial Circuit (Appellate) in and for Manatee County. Case No. 2025 CA 767. January 29, 2026. Counsel: Linsey Sims-Bohnenstiehl, Assistant General Counsel, DHSMV, for Respondent.

ORDER DENYING PETITIONER'S *PRO SE* PETITIONS FOR WRIT OF CERTIORARI

(CHARLES SNIFFEN, J.) This matter is before the Court on Petitioner's pro se Petition for Writ of Certiorari filed on April 27, 2025, and Amended Petition for Writ of Certiorari filed on July 7, 2025. Petitioner seeks a writ of certiorari quashing a final order denying his request, pursuant to section 322.271, Florida Statutes (2022), for early reinstatement of his driver license. The Court has jurisdiction. Fla. R. App. P. 9.030(c)(3), 9.100(f); §§ 322.2615(13), 322.31, Fla. Stat.

As set forth below, the Petitioner's Petition for Writ of Certiorari filed on April 27, 2025, and Amended Petition for Writ of Certiorari filed on July 7, 2025 are hereby **DENIED**.

Background

Petitioner's driver license was revoked for three years following his conviction for leaving the scene of a crash with injury. Following a March 28, 2025, hearing, a hearing officer issued a Final Order denying his request for early reinstatement under section 322.271. The hearing officer considered Petitioner's driving record, qualification for reinstatement, and fitness to drive. Pet'r's Am. App. 3. Based on the facts of the underlying offense and Petitioner's driving record, the hearing officer determined reinstatement would be inconsistent with the legislative intent of section 322.263 to provide maximum safety to Florida drivers. *Id.*

Standard of Review

On certiorari review of an administrative proceeding, the Court must determine whether the petitioner was afforded due process, whether the essential requirements of the law were observed in the proceedings below, and whether the findings and order are supported by competent substantial evidence. *Moore v. Dept. of Highway Safety and Motor Vehicles*, 169 So. 3d 216, 219 (Fla. 2d DCA 2015) [40 Fla. L. Weekly D1520a]. The Court cannot reweigh the evidence or substitute its own judgment for that of the hearing officer. *Dept. of Highway Safety and Motor Vehicles v. Wiggins*, 151 So. 3d 457, 463 (Fla. 1st DCA 2014) [39 Fla. L. Weekly D1894a].

Analysis

Petitioner claims the hearing officer departed from the essential requirements of the law by relying solely on legislative intent and failing to apply the statutory criteria identified in section 322.271. A departure from the essential requirements of the law is more than mere legal error; it requires a violation of a clearly established principle of law resulting in a miscarriage of justice. *Lacaretta Restaurant v. Zepeda*, 115 So. 3d 1091, 1093 (Fla. 1st DCA 2013) [38 Fla. L. Weekly D1385a]. Section 322.271(c) allows for reinstatement of driving privileges restricted to business or employment purposes where driving is necessary for work, on-the-job training, education, church, or medical purposes. The legislature has declared its intent to provide maximum safety for Florida drivers and to deny driving privileges to "persons who, by their conduct and record, have demonstrated their indifference to the safety and welfare of others and their disrespect for the laws of the state and the orders of the state courts and administrative agencies." § 322.263(1), (2), Fla. Stat.

The decision to reinstate driving privileges consists of two separate determinations: whether the person is eligible for a hardship license, and whether the person can be trusted to operate a motor vehicle. *Bland v. Dept. of Highway Safety and Motor Vehicles*, 28 Fla. L. Weekly Supp. 180a (Fla. 6th Cir. Ct. Apr. 23, 2020). Thus, even if the applicant otherwise qualifies for a hardship license, a hearing officer may deny reinstatement where the applicant's history and driving record show they cannot be trusted to safely and lawfully operate a motor vehicle. *Garrett v. Dept. of Highway Safety and Motor Vehicles*, 31 Fla. L. Weekly Supp. 519a (Fla. 10th Cir. Ct. Dec. 4, 2023) (citing *Ware v. Dept. of Highway Safety and Motor Vehicles*, 11 Fla. L. Weekly Supp. 791a (Fla. 12th Cir. Ct. Apr. 12, 2004) and *Sawyer v. Dept. of Highway Safety and Motor Vehicles*, 30 Fla. L. Weekly Supp. 2a (Fla. 5th Cir. Ct. Feb. 14, 2022)).

The face of the final order reflects that the hearing officer considered Petitioner's qualification for hardship reinstatement, and Petitioner's application was not denied on that basis. Instead, the hearing officer denied reinstatement after determining, based on review of Petitioner's driving record and the records related to his underlying motor vehicle offense, that he could not be trusted to safely operate a motor vehicle, notwithstanding his hardship needs. This determination was within the hearing officer's sound discretion and was not a departure from the essential requirements of the law.

Petitioner also claims the final order's vague reference to his driving record fails to make adequate, competent, and substantial findings in support of the ruling. Competent substantial evidence must provide a sufficient factual basis to reasonably infer the conclusion reached. *DeGroot v. Sheffield*, 95 So. 2d 912, 916 (Fla. 1957). The Court must defer to the hearing officer's findings of fact unless there is no competent substantial evidence in the record to support the findings. *Dept. of Highway Safety and Motor Vehicles v. Hirtzel*, 163 So. 3d 527, 529 (Fla. 1st DCA 2015) [40 Fla. L. Weekly D552a].

The hearing officer's grounds for denying Petitioner's application for reinstatement under section 322.263 were supported by competent substantial evidence. Petitioner's driving record showed multiple prior suspensions for DUI refusal and repeated courses of DUI school, a withhold of adjudication for leaving the scene of a crash with injury (the basis for his current suspension), and prior violations for speeding and failing to obey traffic signs. Pet'r's Am. App. 12-13. As to the offense of leaving the scene, Petitioner admitted at the hearing that he left before police arrived despite knowing two other people involved in the crash were injured and being treated by EMS. *Id.* at 13-14. Officers responding later found Defendant in the back yard of a house drinking alcohol and showing signs of intoxication. *Id.* at 15. The records and evidence admitted at the time of hearing established these aspects of Petitioner's driving history and supported the hearing officer's ruling. *See generally* Resp.'s App.

* * *

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Licensing—Driver's license—Suspension—Refusal to submit to breath test—Officer acting outside jurisdiction—Private property—Deputy who was summoned to scene of one-car accident involving injuries on private roadway had jurisdiction to investigate and arrest licensee on private property after noticing indicia of impairment sufficient to create reasonable suspicion that licensee was driving under influence—Written signed implied consent warning in record was competent substantial evidence that warning was in fact read to licensee—Absence of video confirming that the warning was read does not change result

MARGIE LESA SALLOUM, Petitioner, v. DEPARTMENT OF HIGHWAY SAFETY AND MOTOR VEHICLES, Respondent. Circuit Court, 13th Judicial Circuit (Appellate) in and for Hillsborough County, General Civil Division. Case No. 25-CA-2050. Division B. March 2, 2026. Counsel: Linsey Sims-Bohnenstiehl, Assistant General Counsel, DHSMV, for Respondent.

ORDER DENYING PETITION FOR WRIT OF CERTIORARI

(MARK WOLFE, J.) This case is before the court on Margie Lesa Salloum's Petition for Writ of Certiorari filed March 10, 2025, and Amended Petition filed June 4, 2025 seeking review of the Department's February 7, 2025 order upholding the suspension of her driving privilege for her refusal to submit to a breath test to determine her blood alcohol level. The petition is timely, and this court has jurisdiction. Rules 9.100(c)(2), and 9.030(c)(3), Fla. R. App. P; §322.31, Fla. Stat. Petitioner contends that the Hillsborough County sheriff's deputies lacked jurisdiction, in the absence of a written agreement pursuant to section 316.006, Florida Statutes, to conduct an investigation on private property. Petitioner next contends that the hearing officer departed from the essential requirements of law in upholding the suspension in the absence of video evidence confirming that Petitioner was read the implied consent warning, when it was claimed that a video of the deputy giving the warning exists. Because law enforcement was summoned to the scene of an accident involving an injury, as opposed to enforcing traffic laws on private property, and, thereafter, developed reasonable suspicion that a crime had occurred, sheriff's deputies had jurisdiction to investigate and arrest Petitioner. In addition, the written, signed implied consent warning is competent, substantial evidence that Petitioner was read the implied consent warning in the absence of a video. Accordingly, the petition must be denied.

JURISDICTION

Jurisdiction to review a decision of the Department upholding or invalidating a suspension is by petition for writ of certiorari to the circuit court in the county in which Petitioner resides or wherein the formal or informal review was conducted. §§ 322.31; 322.2615(13), Fla. Stat. As such, this court has jurisdiction to review the decision upholding the suspension of Petitioner's driving privilege.

FACTS AND PROCEDURAL HISTORY

On September 3, 2024, at approximately 10:41 p.m., law enforcement was dispatched to the scene of a one-car accident with possible injuries at the corner of Brighton Shore Drive and Manns Harbor Drive in unincorporated Hillsborough County. Petitioner was still in the driver's seat at 10:55 p.m., when law enforcement arrived. Deputy Ventling of the Hillsborough County Sheriff's Office conducted an accident investigation, determining that Petitioner lost control of her car and hit a tree. The car was badly damaged and could not be driven after the accident.

During his investigation, Deputy Ventling noted that Petitioner displayed several indicators of impairment, including being unsteady on her feet, bloodshot and watery eyes, and a very strong odor of an alcoholic beverage emanating from her breath. In addition, Petitioner displayed significant emotional swings and had trouble producing requested documentation. Based on these observations, Deputy Garner conducted a DUI investigation. To the extent Petitioner performed standard field sobriety exercises, she performed them poorly. She did not complete them. She also admitted to consuming alcohol before the crash. Petitioner was arrested at 11:36 p.m. and transported to Central Breath Testing where documentary evidence indicates she was read the Implied Consent Warning at 12:06 a.m. on September 4. Petitioner refused to submit to a breath test, therefore, her driving privileges were suspended.

Petitioner requested a formal review of the suspension of her driving privilege. In the formal review, a hearing officer is charged with determining whether law enforcement had probable cause to believe that the person whose driving privileges were suspended was in actual physical control of a motor vehicle in this state while under the influence; whether the driver refused to submit to a breath test, and whether she was informed of the consequences of refusing to submit to the breath test. The hearing officer issued an order on February 7, 2025 upholding the suspension. This petition followed.

STANDARD OF REVIEW

The Court reviews an administrative decision to determine whether Petitioner received procedural due process, whether the essential requirements of the law have been observed, and whether the administrative findings and judgement are supported by competent substantial evidence. *City of Deerfield Beach v. Vaillant*, 419 So. 2d 624, 626 (Fla. 1982).

DISCUSSION

Petitioner raises two issues in her challenge to the upholding of the suspension of her driving privileges. The first is that the Hillsborough County Sheriff's deputies lacked jurisdiction to conduct an investigation on a private roadway in the absence of a written agreement pursuant to Florida Statute section 316.006. The second is that no competent, substantial evidence supported the conclusion that Petitioner refused to submit to a breath test in the absence of video evidence of the request, where the existence of the video is claimed, but not furnished to the hearing officer.

With regard to law enforcement's jurisdiction to enter private property to conduct an investigation, the sheriff wasn't dispatched to conduct traffic control: officers were called by several people to the scene of an accident which resulted in significant property damage, the air bag deployed, and possibly resulted in injuries to the driver. *Zeigler v. State*, 402 So. 2d 365, 371 (Fla. 1981) ("The right of police to enter and investigate an emergency, without an accompanying intent either to seize or arrest, is inherent in the very nature of their duties as peace officers and derives from the common law.); *Campbell v. State*, 477 So. 2d 1068, 1070 (Fla. 2d DCA 1985) (after defendant called 911, officers were authorized to enter residence where paramedics were assisting her).

Where officers are called to the private property or are otherwise present for purposes other than traffic enforcement, Florida courts have found that the DUI investigation was lawful and have upheld related DUI charges. In *Zink v. State*, 448 So. 2d 1196 (Fla. 1st DCA 1984), a construction foreman called the officer to the scene because Zink was harassing workers at the construction site by trying to run them over with his car. The officer arrived and observed Zink "spinning donuts" on the property. *Id.* at 1196-97. An investigation and DUI arrest followed. The county court denied Zink's motion to dismiss his DUI charge based on an argument that he could not be so charged because his offense occurred on private property. The circuit court affirmed the lower court's denial, and the district court of appeal denied Zink's petition for certiorari relief. *Id.* at 1196. The court explained that section 316.193(1)(a) makes it unlawful for a person to drive or be in actual physical control of a motor vehicle in this state

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while under the influence of alcohol to the extent that his normal faculties are impaired, and that "it is not objectionable that the Florida Legislature has chosen to apply the statutory prohibition against driving while under the influence of alcohol more broadly throughout the state than certain other prohibitions contained in chapter 316." *Id.* at 1197. The court explained that "the phrase 'within this state' is not ambiguous and very lucidly indicates the legislature's intent to encompass *all lands* in the state" (emphasis added).

Here, Petitioner was suspected of committing a DUI offense on private property after law enforcement and county fire rescue responded to the scene of a one-car accident in which Petitioner was the driver. Extending Petitioner's argument on this point to its logical conclusion, law enforcement would be barred from investigating crimes occurring on private property. Because that is not the law, this Court finds that law enforcement had jurisdiction to investigate, and, ultimately, arrest Petitioner on the property.

Petitioner next challenges the suspension on the ground that no competent, substantial evidence supports that she refused to provide a breath sample because a video that was supposedly created or included in the record was not in the record. Indeed, no video of events at CBT appear to be in the record.[1] Although Petitioner concedes that documentary evidence supports that Petitioner was given the implied consent warning, Petitioner also seems to make the nonsensical argument that the court must cull the record for evidence that has not been presented to it. The "missing evidence" does not refute that law enforcement gave the warning; rather, it confirms what the documentary evidence already shows, which is that the warning was given. The law does not mandate that a video be provided, even if a video exists. Section 322.2615(2)(a) states that

> "Except as provided in paragraph (1)(a), the law enforcement officer shall forward to the department, within 5 days after issuing the notice of suspension, the driver license; an affidavit stating the officer's grounds for belief that the person was driving or in actual physical control of a motor vehicle while under the influence of alcoholic beverages or chemical or controlled substances; the results of any breath or blood test or an affidavit stating that a breath, blood, or urine test was requested by a law enforcement officer or correctional officer and that the person refused to submit; the officer's description of the person's field sobriety test, if any; and the notice of suspension." (Emphasis added.)

Under section 322.2615(2)(a), an affidavit that Petitioner refused to submit to a breath test is all that is required to be furnished to the hearing officer. Regarding videos generally, section 322.2615(2)(b) permits, but does not mandate, the submission of a video of field sobriety exercises. It is silent on the matter of implied consent.

Petition DENIED.

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[1]One video shows Petitioner's arrival at a facility this court assumes is CBT. That assumption is not confirmed or refuted by the video. No events within the facility are depicted in any video in the court's possession. Because all of the videos provided to the court lack audio, the subject video does not indicate whether Deputy Garner verbally asked Petitioner to submit to a breath test.

* * *

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CIRCUIT COURTS—ORIGINAL

Public records—Exemptions—Trade secrets—Action brought by licensed life expectancy provider against Office of Insurance Regulation seeking to prevent disclosure of audits of life expectancies that LE provider was required by statute to submit to OIR and which viatical settlement provider has sought through public records request—Material at issue contains trade secrets where material derives independent economic value from not being generally known, LE provider spent considerable time and effort developing calculations and analyses used in life expectancies process, and LE provider took reasonable efforts to ensure trade secrecy—No merit to argument that LE provider's marketing statements regarding its accuracy rates demonstrate that it does not keep its information secret—General rates and figures are categorically different from detailed and specific information in OIR reports—Neither fact that VS provider is not direct competitor of LE provider nor fact that OIR reports are created for purpose of complying with regulatory statute and not for purpose of selling life expectancy reports is material to trade secret status of OIR reports—Summary judgment—Factual issues—Although question of whether particular information constitutes trade secret is issue of fact, where material facts are not in dispute, and those facts establish that trade secret protections apply, summary judgment is appropriate

LAPETUS SOLUTIONS, INC., Plaintiff, v. FLORIDA OFFICE OF INSURANCE REGULATION, and COVENTRY FIRST LLC, Defendant/Intervenor Defendant. Circuit Court, 2nd Judicial Circuit in and for Leon County. Case No. 2025-CA-000516. February 4, 2026. Rehearing Denied Feburary 25, 2026. Michael Beato, Judge.

[Editor's Note: Notice of Appeal Filed March 4, 2026. (Coventry First LLC v. Lapetus Solutions, Inc., Fla. 1DCA, Case No. 1D2026-0770.]

ORDER

This is a trade secrets and public records case. Lapetus Solutions, Inc. submitted material to the Office of Insurance Regulation, as required by statute. Coventry First LLC sought that material through a public records request. Lapetus sued the office to prevent disclosure, arguing that the material was protected by a trade secrets public records exemption. Coventry then intervened in the case.

Both Lapetus and Coventry moved for summary judgment. Lapetus also moved to strike Coventry's discovery requests, and Coventry moved to strike Lapetus's response to Coventry's summary judgment motion.

After reviewing the summary judgment papers and the at-issue material, and after conducting a motions hearing, Lapetus's summary judgment motion is **GRANTED**. All remaining motions are **DENIED**.

Undisputed Material Facts

Facts aren't in dispute. To be sure, Lapetus and Coventry often raise and focus on different facts. But neither side's facts contradict the other. As such, "there is not the slightest doubt as to the facts" of the case, and "only" a "legal conclusion remains to be resolved." *Orozco v. State Farm Mut. Auto. Ins. Co.,* 360 F. Supp. 223, 223 (S.D. Fla. 1972) (cleaned up). That makes summary judgment appropriate.

In this order, docketed documents are cited as "Doc." Additionally, what's often referred to as the "submitted material" is the at-issue material Lapetus submitted to the Office of Insurance Regulation under Florida Statutes section 626.99175(5), and under seal in this case, Doc.25. It's the material that, according to Lapetus, contains trade secrets.

I. Lapetus is a licensed life expectancy provider. Doc.13 at 17 (exhibit A, ¶3). Life expectancy providers, like Lapetus, create life expectancy assessments. Fla. Stat. § 626.9911(5). These assessments provide "opinion[s] or evaluation[s] as to how long a particular person is to live, or relat[e] to such person's expected demise." Fla. Stat. § 626.9911(4).

As a life expectancy provider, Lapetus is required to provide the Office of Insurance Regulation with the following material:

> (5) As part of the application, and on or before March 1 of every 3 years thereafter, a registered life expectancy provider shall file with the office an audit of all life expectancies by the life expectancy provider for the 5 calendar years immediately preceding such audit, which audit shall be conducted and certified by a nationally recognized actuarial firm and shall include only the following:
>
> (a) A mortality table.
>
> (b) The number, percentage, and an actual-to-expected ratio of life expectancies in the following categories: life expectancies of less than 24 months, life expectancies of 25 months to 48 months, life expectancies of 49 months to 72 months, life expectancies of 73 months to 108 months, life expectancies of 109 months to 144 months, life expectancies of 145 months to 180 months, and life expectancies of more than 180 months.

Fla. Stat. § 626.99175(5).

Coventry is a viatical settlement provider. Doc.16 at 22 (exhibit 1, ¶ 1). Viatica' settlement providers, like Coventry, buy life insurance policies and either sell them or hold them as investments. Fla. Stat. § 626.9911(11)-(16). Viatica' settlement providers can obtain life expectancy assessments from life expectancy providers. Naturally, the accuracy of those life expectancy assessments matter to viatical settlement providers.

II. Florida has broad public records disclosure laws. But it also has statutory exemptions. One exemption is for trade secrets. Fla. Stat. § 119.0715. "Trade secret" under the exemption is tied to the definition of "trade secret" under the Uniform Trade Secrets Act. Fla. Stat. § 19.0715(1). The definition is:

> [I]nformation, including a formula, pattern, compilation, program, device, method, technique, or process that:
>
> (a) Derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use; and
>
> (b) Is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

Fla. Stat. § 688.002(4).

Relevant here, there's a way to protect materials, submitted to the Office of Insurance Regulation, with trade secrets. The entity submitting the material must: mark "trade secret" on pages containing trade secrets, separate matters with trade secrets from matters without trade secrets, and submit an affidavit that contains statutorily required information. Fla. Stat. § 624.4213(1).

III. In 2025, Lapetus submitted section 626.99175(5) material to the Office of Insurance Regulation. Doc.13 at 17 (exhibit A, ¶3); Doc.25 (sealed material). For the purposes of this case, the material was submitted under seal and reviewed in camera. Doc.25 (sealed material). The material contained mortality tables and numbers, percentages, and ratios of life expectancies for seven mortality bands. The material also contained detailed methodologies, calculations, data, and explanations of those numbers, percentages, and ratios. Pages were marked "trade secret," and section 624.4213(1) affidavits accompanied the material. Doc.25 (sealed material); Doc.13 at 24-28 (composite exhibit A).

Coventry sought that material through a public records request. Specifically, Coventry sought:

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> [A]ny and all (including the report due March 1, 2025) audits of life expectancies required to be filed with the office pursuant to Section 626.99175(g)(5) [sic] by the above referenced entity, Lapetus Solutions, Inc.

Doc.13 at 32 (exhibit B). The office informed Lapetus of this request. Doc.13 at 30 (exhibit B).

Under the scheme outlined in Florida Statutes section 624.4213, Lapetus timely sued the office to prevent it from disclosing the requested material. In filing this case, Lapetus is "seeking a determination whether the document in question contains trade secrets and an order barring public disclosure of the document" Fla. Stat. § 624.4213(2). Coventry later intervened. Doc.14.

IV. Both Lapetus and Coventry moved for summary judgment. In its motion, Lapetus argued that the submitted material contains trade secrets, that disclosing the material would cause it substantial harm, and that it takes steps to prevent the material's disclosure. Doc.13. Lapetus filed an affidavit from Stuart Jay Olshansky, its chief executive officer, to that effect. Doc.13 at 17-21 (exhibit A). Notably, Mr. Olshansky stated that "[b]ased on internal records, Coventry has obtained more than 4,000 individual life expectancy assessments from Lapetus, which represents approximately 25% of Lapetus' total database." Doc.13 at 20 (exhibit A, ¶25).

The Office of Insurance Regulation asked that the submitted material be reviewed in camera. Doc.15.

Coventry opposed Lapetus's motion and filed a cross motion for summary judgment. Doc.16. Coventry explained that it sought Lapetus's submitted material because the numbers, percentages, and ratios in the material are "important for entities like Coventry to use in evaluating the trustworthiness of Lapetus' life expectancies, and for the investing public to be able to evaluate the integrity of pools of policies purchased based on Lapetus' life expectancies." Doc.16 at 6. In addition, Coventry sought the material because it "believes Lapetus may have filed statutorily non-compliant reports" with the Office of Insurance Regulation. Doc.16 at 10.

The submitted material, Coventry argued, shouldn't be considered trade secrets. According to Coventry, the submitted material was merely created for the purpose of complying with a statutory mandate, and Coventry noted that it isn't a direct competitor of Lapetus. Doc.16 at 4, 13-14. Coventry also contended that Lapetus waived any secrecy protections by making public statements like the following: "our accuracy rate is 96.3%," "Lapetus Solutions is pleased to report that our formal measurement of Actual/Expected (A/E) is 96.3 percent for the time period February 20, 2019 to February 1, 2022," and "our accuracy rates, in accordance with guidelines set forth by the State of Florida is currently about 95%." Doc.16 at 14-16 (providing record citations). Some of these statements came from a 2022 redacted report from Lapetus. Doc.16 at 14-16 (providing record citations).

As for its cross motion, Coventry stated that Lapetus closed operations in August 2025, which, according to Coventry, waived or obviated Lapetus's need for trade secrets protection. Doc.16 at 20.

There are other outstanding motions. Lapetus filed a motion to strike Coventry's discovery requests. Doc.18. And Coventry moved to strike Lapetus's response in opposition to its cross motion for summary judgment, as untimely filed. Doc.26.

Legal Standard

This case largely turns on Lapetus's summary judgment motion. Florida's summary judgment standard matches the federal standard. Fla. R. Civ. P. 1.510(a).

Summary judgment gauges "whether a genuine issue of material fact exists to be tried." *In re Amendments to Fla. Rule of Civ. P 1.510,* 317 So. 3d 72, 75 (Fla. 2021) [46 Fla. L. Weekly S95a] (cleaned up). The moving party bears the initial burden of showing that material facts aren't in dispute. *Fitzpatrick v City of Atlanta,* 2 F.3d 1112, 1115 (11th Cir. 1993). If the moving party satisfies that burden, then the nonmoving party has the burden to "go beyond the pleadings, and present affirmative evidence to show that" a material fact is in dispute. *Porter v. Ray,* 461 F.3d 1315, 1320 (11th Cir. 2006) [22 Fla. L. Weekly Fed. C1918a]. And, of course, summary judgment is only appropriate when the moving party is entitled to judgment as a matter of law. Fla. R. Civ. P. 1.510(a).

Discussion

Lapetus prevails at summary judgment. It presented sufficient evidence to show that its submitted material has trade secrets. Lapetus also showed that material facts aren't in dispute. The burden therefore shifted to Coventry. Coventry, however, didn't present sufficient evidence to overcome summary judgment.

I. Lapetus presented sufficient evidence to show that its submitted material contains trade secrets. Again, the operative definition of "trade secret" is:

> [I]nformation, including a formula, pattern, compilation, program, device, method, technique, or process that:
>
> (a) Derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use; and
>
> (b) Is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

Fla. Stat. § 688.002(4).

Lapetus's submitted material contains tables, numbers, percentages, and ratios of life expectancies in seven mortality bands, along with detailed methodologies, calculations, data, and explanations of those numbers, percentages, and ratios. Doc.25 (sealed material). That's the kind of "information"—"formula[s]," "compilation[s]," "method[s]," and "techniques"—that falls under the trade secrets definition. *See generally Fasano Assocs., Inc. v. Off of Ins. Regul.,* 2013-CA-1091, 2016 WL 493205, at *1 (Fla. 2d Jud. Cir. Jan. 13, 2016) (section 626.99175(5) material falls under a statutory trade secrets exemption). *See also Columbia Hosp. (Palm Beaches) Ltd. P'ship v. Hasson,* 33 So. 3d 148, 149 (Fla. 4th DCA 2010) [35 Fla. L. Weekly D1067a] ("the amount the hospital has charged patients with and without insurance, those with letters of protection, and differences in billing for litigation patients versus non-litigation patients" were conceded to be trade secrets); *Coventry First, LLC v. Off. of Ins. Regul.,* 30 So. 3d 552, 558 (Fla. 1st DCA 2010) [35 Fla. L. Weekly D383a] (Coventry argued that its "proprietary marketing and pricing data" are trade secrets).

Lapetus's material "[d]erives independent economic value" "from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use." Fla. Stat. § 688.002(4)(a). Lapetus presented evidence that showed that it "expended considerable time and effort in developing" the "calculations, analyses, assumptions, projections, and other proprietary, necessary information used in the life expectancies process," undergoing "years of research, validation, and clinical integration." Doc.13 at 18-21 (exhibit A, ¶¶ 16-19, 31). Disclosing the material would "irreparabl[y] harm" Lapetus, because its "methodolog[ies] appl[y] a consistent protocol across all evaluations," making it "feasible for" others "to approximate or replicate" Lapetus's material. Doc.13 at 21 (exhibit A, ¶¶ 26-30). *See also Off. of Ins. Regul. v. State Farm Fla. Ins. Co.,* 213 So. 3d 1104, 1107 (Fla. 1st DCA 2017) [42 Fla. L. Weekly D655a] ("State Farm's QUASR data has independent economic value, or potential value at least, satisfying the statutory definition of a trade secret."); *Managed Care of N.A., Inc. v. Fla. Healthy Kids Corp.,* 268 So. 3d 856, 861 (Fla. 1st

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DCA 2019) [44 Fla. L. Weekly D735a] ("Public information can be subject to trade secret protection, as the time and effort spent compiling and the unique presentation thereof, may render the product a trade secret.").

It bears repeating that Coventry wanted to access the material to "evaluat[e] the trustworthiness of Lapetus' life expectancies," which could financially benefit Coventry. Doc.16 at 6. After all, Coventry has a significant amount of life expectancy assessments from Lapetus. Doc.13 at 20 (exhibit A, ¶25).

Lapetus took reasonable efforts to ensure trade secrecy. The submitted material's pages were marked "trade secret," Doc.25 (sealed material), and Lapetus submitted affidavits with its material, Doc.13 at 24-28 (composite exhibit A). That complied with section 624.4213(1). Lapetus also presented evidence showing that it strictly controls access to the material and trains employees on privacy practices and the need to maintain the material's confidentiality. Doc.13 at 19 (exhibit A, ¶¶ 19-22). *See Fasano Assocs.,* 2016 WL 493205, at *1 ("The information is not, and has not been, reasonably obtainable without Fasano's consent by other persons by use of legitimate means."); *Premier Lab Supply, Inc. v. Chemplex Indus., Inc.,* 10 So. 3d 202, 206 (Fla. 4th DCA 2009) [34 Fla. L. Weekly D772a] ("Additionally, Chemplex presented evidence of the reasonable measures it took to maintain the secrecy of its machine Solazzi testified that the spooling machine was kept in a separate room away from the public. Only those persons who operated the machine were authorized to enter the 'film room.' ").

As such, Lapetus satisfied its burden at summary judgment.

II. The burden therefore shifted to Coventry. Coventry, however, didn't meet that burden.

Coventry didn't present evidence that directly disputes Lapetus's evidence. For example, Coventry didn't present evidence that Lapetus expended *little* time and effort in developing its methodologies—or that the submitted material contains *no* independent economic value. This isn't like a car accident case, where one side presents evidence that the traffic light was red, and the other side presents evidence that the light was green.

Instead, Coventry identified several marketing and organizational documents from Lapetus. Coventry used these documents, and the statements in these documents, to suggest that Lapetus doesn't keep its tables, numbers, percentages, and ratios secret. Coventry, for instance, identified marketing statements and redacted documents from 2022 that tout Lapetus's "accuracy rate" of "96.3%." Doc.16 at 14-16 (providing record citations). Lapetus, for its part, didn't dispute the existence or accuracy of these statements or documents. It simply argued that the statements don't matter and argued that they don't waive or obviate trade secrecy.

Lapetus has the better of the argument. The general accuracy rates and figures that Coventry identified are categorically different from the detailed, and specific, tables, numbers, percentages, and ratios for seven specific mortality bands required under section 626.99175(5), and different from the fulsome methodologies, calculations, data, and explanations provided in Lapetus's submitted material in 2025. Without the specific details Coventry's trying to obtain, the general rates and figures don't mean much. And as for the 2022 redacted report that Coventry identifies, it's just that: it's redacted, it's a different report, and it's from years back. *See Fitzpatrick,* 2 F.3d at 1121 ("Although" the non-moving party's evidence "is not irrelevant," "we hold that when considered in the context of the totality of the evidence, it would not be sufficient to prevent" the moving party "from obtaining a directed verdict at trial.").

It also bears mentioning that the operative definition of trade secrets only requires reasonable efforts, not perfect ones, under the circumstances, to keep materials secret. *See generally Premier Lab Supply,* 10 So. 3d at 206 ("the lack of a confidentiality agreement does not necessarily defeat Chemplex's argument that the machine is a trade secret").

Regardless, Coventry presented additional reasons why the submitted material shouldn't be considered trade secrets. It argued that the "information in Lapetus' OIR reports is created for the purpose of complying with a regulatory statute, not for the purpose of selling life expectancy reports," Doc.16 at 14, and Coventry contended that it matters that it's not a direct competitor of Lapetus, Doc.16 at 4.

The operative trade secrets definition, however, doesn't turn on whether a direct competitor is seeking the material or why the material was created. Case law recognizes that statutorily mandated material can contain trade secrets. *E.g., State Farm,* 213 So. 3d at 1105 (statutorily required quarterly reports contained trade secrets).

Coventry also argued that section 626.99175(5) simply requires tables, numbers, percentages, and ratios—not detailed explanations of methodologies and calculations. Doc.16 at 18-19.

Even so, the tables, numbers, percentages, and ratios themselves have been found to be trade secrets. *Fasano Assocs.,* 2016 WL 493205, at *1. And the trade secrets definition isn't limited to only section 626.99175(5) material. *See generally Sepro Corp. v. Dep't of Env't Prot.,* 839 So. 2d 781, 783 (Fla. 1st DCA 2003) [28 Fla. L. Weekly D492b] (some disputed "filings were not required by law").

Finally, Coventry stated that "whether a particular type of information constitutes a trade secret is a question of fact." Doc.16 at 19 (cleaned up).

True. But when there's no dispute over specific material facts, and when specific material facts establish that trade secrets protections apply, summary judgment is appropriate. *See, e.g., Fasano Assocs.,* 2016 WL 493205, at *3 (granting summary judgment in a trade secrets case). As explained above, summary judgment is appropriate here.

* * *

In sum, on Lapetus's summary judgment motion, Lapetus carried its burden, and Coventry didn't carry its burden. Material facts aren't in dispute, and Lapetus is entitled to judgment as a matter of law.

III. Coventry moved for summary judgment as well. It raised only one argument: Lapetus can no longer make its trade secrets arguments because it "close[d] its doors" in August 2025. Doc.16 at 20. But Coventry provided no legal authority for this proposition. Nor could such authority be found. In this absence, Coventry's motion is due to be denied.

Conclusion

As explained above, it is:

ORDERED that Lapetus's summary judgment motion is **GRANTED**. Coventry's cross motion for summary judgment is **DENIED**. All pending motions are **DENIED AS MOOT**. The clerk is directed to **CLOSE** this case. Final judgment will be separately entered.

*　　*　　*

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Colleges and universities—Presidential selection and compensation—Complaint alleging breach of fiduciary duties by members of university board of trustees during presidential selection process and seeking mandatory injunctions requiring board to hire independent consultant to investigate selection process and requiring university foundation to conduct financial analysis of presidential compensation package is dismissed with prejudice—Standing—Plaintiffs, who are persons with ties to university, lack standing where their alleged injuries are either speculative or are harms that university and state, not plaintiffs themselves, will suffer—Injunctions—Plaintiffs are not entitled to mandatory injunctions where they have not identified any clear legal right that has been violated, and requested relief goes beyond what any of the referenced constitutional, statutory, and regulatory provisions contemplate—There is no statute that authorizes members of public to bring fiduciary actions against university trustees

GABRIELLE ALBERT, et al., Plaintiffs, v. FLORIDA A&M UNIVERSITY BOARD OF TRUSTEES, et al., Defendants. Circuit Court, 2nd Judicial Circuit in and for Leon County. Case No. 25-CA-1125. February 10, 2026. Michael Beato, Judge.

ORDER GRANTING MOTION TO DISMISS

This is a higher education case. After a lengthy process, the Florida A&M University board of trustees selected a new university president. The plaintiffs here raise concerns about that process. In their operative complaint, the plaintiffs seek mandatory injunctive relief against the board, and they allege that the board members violated their fiduciary duties to the university. The university defendants, in turn, raise concerns about the plaintiffs' complaint. The defendants move to dismiss the complaint, and contend that the plaintiffs lack standing to sue, aren't entitled to injunctive relief, and fail to state their claims, among other arguments.

Having reviewed the court filings, and after conducting a motion hearing, the defendants' motion to dismiss is **GRANTED**.

Background

In this order, docket citations are referred to as "Doc."

I. The plaintiffs are ten individuals with ties to the university. One plaintiff is a former board member. Doc.34 at 3, ¶ 5. Another is a volunteer member of the university's foundation. Doc.34 at 3, ¶ 5. The remaining plaintiffs "are individuals with significant actual charitable contributions, positions of voluntary services, and/or other proximate ties" to the university. Doc.34 at 3, ¶ 5. *See also* Doc.40 (dismissing one plaintiff).

The defendants are board of trustees members and the board itself, along with two representatives from the university's presidential search committee. Doc.34 at 3-4, ¶¶ 6-10.

II. The second amended complaint is the operative complaint. Doc.34. In it, the plaintiffs detail their concerns about the board's process to select and compensate a new university president. The plaintiffs mention several constitutional, statutory, and regulatory provisions in their complaint. *See, e.g.*, Doc.34 at 19, ¶ 54 ("Florida Statutes §1004.28(2)(b)" "holds in pertinent part that BOT authority over the Foundation is limited to written directives consistent with Board of Governors rules."); Doc.34 at 20, ¶ 58 ("Article IX, Section 7(d) of the Florida Constitution establishes that university boards of trustees to 'administer' universities, while the Board of Governors are authorized as general oversight to 'govern' the system.").

The complaint has two counts. The first count is for mandatory injunctive relief. Doc.34 at 20-26, ¶¶ 59-74. The plaintiffs seek a court order "requiring" the board "to engage an independent consultant to conduct a full investigation of the presidential selection process" and "further investigate" the board's deliberation process. Doc.34 at 25. The plaintiffs also seek a court order requiring the university foundation "to conduct a full and complete financial analysis of the feasibility and the prospective terms of a responsible presidential compensation package." Doc.34 at 24. Without this relief, the plaintiffs contend that the university will risk accreditation and reputational harm. *See, e.g.*, Doc.34 at 22-24, ¶¶ 66-73.

For their second count, the plaintiffs allege that the defendants breached various fiduciary duties owed to the university, such as the duty of care and duty of loyalty, during the selection process. Doc.34 at 26-31, ¶¶ 75-92.

III. The university defendants move to dismiss the operative complaint. Doc.36. They argue that the plaintiffs lack standing to sue, that the plaintiffs aren't entitled to injunctive relief, that the complaint violates separation of powers principles, and that the complaint engages in shotgun pleading, among other arguments. Doc.36. A motion hearing was held on February 4, 2026. Doc.37.

Legal Standard

On a motion to dismiss, all well-pleaded, non-conclusory facts are taken as true, and the analysis is limited to the four corners of the complaint. *City of Gainesville v. Dep't of Transp.*, 778 So. 2d 519, 522 (Fla. 1st DCA 2001) [26 Fla. L. Weekly D674b].

Discussion

Dismissal is warranted. The plaintiffs lack standing to sue. Even if there's standing, the plaintiffs failed to establish their request for mandatory injunctive relief and failed to establish their breach of fiduciary duties claim.

Standing. A plaintiff needs standing to sue. And to have standing to sue, a plaintiff must have suffered an injury—one that's "concrete, distinct, and palpable" to the plaintiff. *Cmty. Power Network Corp. v. JEA*, 327 So. 3d 412, 415 (Fla. 1st DCA 2021) [46 Fla. L. Weekly D2002a]. "[C]onclusory and speculative" harms will not do. *McCall v. Scott*, 199 So. 3d 359, 366 (Fla. 1st DCA 2016) [41 Fla. L. Weekly D1889c].

Here, the plaintiffs' alleged injuries are insufficient for standing. The harms raised by the plaintiffs are either speculative, or are harms that the university and state not the plaintiffs themselves might suffer. *See, e.g.*, Doc.34 at 22, ¶ 66 (there's a "*high risk* that financial contributions, and volunteer efforts by Plaintiffs[,] will be allocated to unsound governance practices and expenditures"); Doc.34 at 23, ¶ 70 (the plaintiffs may "suffer long-term harm as the *risk of waste* of their time and funds increases"); Doc.34 at 23-24, ¶¶ 70, 73 ("a complex legal cloud will be placed over *FAMU, and public education* generally in Florida") (there may be "harm" to "*the reputation of the institution* among potential contributors," "thereby placing valid academic priorities, offerings and research activities *at risk*"); Doc.34 at 22-23, ¶¶ 68, 71 (there may be "*great risk* for the fiscal soundness of *the university*" and "risks to" its "accreditation status").

The injuries therefore aren't concrete, distinct, and particular to the plaintiffs. The plaintiffs thus lack standing to sue. *See, e.g., DeSantis v. Fla. Educ. Ass'n*, 306 So. 3d 1202, 1214 (Fla. 1st DCA 2020) [46 Fla. L. Weekly D2271a] (discussing the alleged "hypothetical" injuries); *McCall*, 199 So. 3d at 366 ("Appellants' allegations that the FTCSP has harmed them are conclusory and speculative.").

Injunctive Relief. Mandatory injunctions are a rare, and disfavored, form of relief. *Johnson v. Killian*, 27 So. 2d 345, 346 (Fla. 1946). They "should be granted only in situations which so clearly call for it as to make its refusal work real and serious hardship and injustice." *Johnson*, 27 So. 2d at 346 (cleaned up). After all, a mandatory injunction requires a party to do something, not simply refrain from doing something.

Regardless, a mandatory injunction can be granted where a legal right has been violated. *Shaw v. Tampa Elec. Co.*, 949 So. 2d 1066, 1069 (Fla. 2d DCA 2007) [32 Fla. L. Weekly D181a]. The right must be "clear and free from reasonable doubt." *Fla. E. Coast Ry. Co. v. Taylor*, 47 So. 345, 345-46 (Fla. 1908).

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For example, a "settlement agreement" may require a "landlord to replace or repair" a "restaurant's air conditioning." *Legakis v. Loumpos*, 40 So. 3d 901, 903 (Fla. 2d DCA 2010) [35 Fla. L. Weekly D1648a]. A condominium declaration may require an association to "maintain, repair and replace" "floors and ceiling slabs." *Amelio v. Marilyn Pines Unit II Condo. Ass'n, Inc.,* 173 So. 3d 1037, 1039-40 (Fla. 2d DCA 2015) [40 Fla. L. Weekly D1612a]. In those cases, a mandatory injunction may be appropriate: rights are clearly set out in legal provisions.

Here, however, the plaintiffs don't identify any constitutional, statutory, regulatory, or legal provision that provides them with clear legal rights. To be sure, the plaintiffs referenced several constitutional, statutory, and regulatory provisions, generally concerning university administration, in their complaint. But these provisions don't confer clear and specific rights to the plaintiffs, and the provisions don't contain any rights-creating language. *See generally Medina v. PPSA*, 606 U.S. 357, 379 (2025) [31 Fla. L. Weekly Fed. S232a] (discussing rights-creating language in statutes); *Mayfield v. Sec'y, Fla. Dep't of State,* 402 So. 3d 1002, 1005-06 (Fla. 2025) [50 Fla. L. Weekly S27a] (discussing clear legal rights in the elections and mandamus context); *Sec'y of State v. Smart & Safe Fla.*, 1D26-0145, 2026 WL 184610, at *4 (Fla. 1st DCA Jan. 23, 2026) [51 Fla. L. Weekly D166a] ("SSF has identified no source of law from which a right or duty between SSF and the Secretary can be identified with respect to the Secretary's authority to provide written directions to the Supervisors.").

Nor have the plaintiffs established that they are entitled to the specific, mandatory injunction they seek—ordering the board of trustees to engage an independent consultant and ordering the university foundation to conduct a financial analysis. This requested relief goes beyond what their referenced constitutional, statutory, and regulatory provisions contemplate.

Fiduciary Duties. As a general matter, corporate board members owe fiduciary duties to their corporations. When board members violate fiduciary duties, corporate shareholders can file derivative actions. Derivative actions allege that corporate board members have harmed the corporation. *See generally Fort Pierce Corp. v. Ivey*, 671 So. 2d 206, 206-07 (Fla. 4th DCA 1996) [21 Fla. L. Weekly D724a].

These kinds of actions are set out, and contemplated, under statutory law. *See, e.g.*, Fla. Stat. § 617.07401 (not for profit corporation). Statutory law allows certain individuals, under certain circumstances, to make these claims against corporations. *E.g.,* Fla. Stat. § 607.0741(1) (a "shareholder may not commence a derivative proceeding unless," in part, "the shareholder" was "a shareholder at the time the action is commenced"); Fla. Stat. § 607.0742 (a "complaint in a proceeding brought in the right of a corporation must be verified and allege with particularity" certain facts).

As best can be told, these kinds of statutes, authorizing these kinds of actions, are absent in the higher education context. Nor could a specific statute be found that allows, effectively, members of the public to bring fiduciary actions against university board of trustees members.

In this absence, the plaintiffs can't bring their breach of fiduciary duties claim. "Courts have little room to imply" "rights to bring a civil action; rather, statute-based private rights of action must be legislatively created and show textual support." *Torres v. Shaw*, 345 So. 3d 970, 974 (Fla. 1st DCA 2022) [47 Fla. L. Weekly D1764a].

Conclusion

Again, dismissal is warranted. Based on the above, "it conclusively appears there is no possible way" for the plaintiffs "to amend the complaint to state" their "cause[s] of action." *Undereducated Foster Children of Fla. v. Fla. Senate*, 700 So. 2d 66, 67 (Fla. 1st DCA 1997) [22 Fla. L. Weekly D2290b]. That makes dismissal with prejudice appropriate.

Therefore, it is:

ORDERED that the defendants' motion to dismiss is **GRANTED**. The second amended complaint, Doc.34, is **DISMISSED WITH PREJUDICE**. The clerk is directed to **CLOSE** this case. A final order will be separately entered.

* * *

Mortgage foreclosure—Default—Affirmative defenses—Standing—Heirs of deceased mortgagor who are non-parties to mortgage lack standing to assert affirmative defense based on bank's failure to comply with HUD regulations—Moreover, violation of HUD regulations is basis for monetary sanctions, not invalidation of foreclosure

WELLS FARGO BANK N.A., Plaintiff, v. DERRICK GENARDO BRADLEY, KATHY LA'MARION BRADLEY-GOLDWIRE, et al., Defendants. Circuit Court, 2nd Judicial Circuit in and for Gadsden County. Case No. 20-2025-CA-000847-AXXX-CX. March 13, 2026. David Frank, Judge. Counsel: Maxine Meltzer, Brock & Scott, PLLC, Winston Salem, NC, for Plaintiff. Malcolm E. Harrison, Wellington, for Defendant.

ORDER GRANTING PLAINTIFF'S MOTION TO STRIKE DEFENDANTS' HUD AFFIRMATIVE DEFENSE

This motion came before the Court for hearing on February 24, 2026, and the Court having reviewed the papers filed in support and opposition and the court file, heard argument of counsel, and being otherwise fully advised in the premises, finds

Plaintiff is foreclosing on a residential property and has named as defendants two identified heirs of the deceased borrower. The defendant heirs are Derrick Genardo Bradley and Kathy La'Marion Bradley-Goldwire. They retained counsel and filed answers and affirmative defenses.

Among others, the defendants asserted the affirmative defense of plaintiff's failure to comply with the United States Department of Housing and Urban Development ("HUD") regulations pursuant to 24 CFR 203.500, which defendants quote as, "no mortgage shall commence foreclosure. . .until the requirements until of this subpart have been followed."[1]

First, it is instructive to cite the complete text of the regulation, which is:

> § 203.500 Mortgage servicing generally.
>
> This subpart identifies servicing practices of lending institutions that HUD considers acceptable for mortgages insured by HUD. Failure to comply with this subpart shall not be a basis for denial of insurance benefits, but failure to comply will be cause for imposition of a civil money penalty, including a penalty under § 30.35(c)(2), or withdrawal of HUD's approval of a mortgagee. It is the intent of the Department that no mortgagee shall commence foreclosure or acquire title to a property until the requirements of this subpart have been followed.
> [70 FR 21578, Apr. 26, 2005]

Plaintiff responds that, as heirs, rather than parties to the mortgage contract, defendants have no standing to challenge the foreclosure.

The Court's first impression is found in a Second District opinion. "The notion that a party named as a defendant in a civil action has no standing to require that the plaintiff prove the elements of its cause of action is a novel one, and we have been unable to find any other area where the law says that a named defendant must have standing to require that the plaintiff prove its case. *Green Emerald Homes, LLC v. 21st Mortgage Corp.*, 300 So.3d 698, 703 (Fla. 2d DCA 2019) [44 Fla. L. Weekly D1449b].

Indeed, the challengers are "named defendants" and they certainly have a stake in the outcome of the foreclosure. The mortgaged property is their inheritance from their mother. It is also where they live. And, they have a statutory right of redemption. (§ 45.0315, Fla.

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Stat.).

But, and this is a big but, "[b]ecause [defendants were] not a party to the mortgage, . . . [they do] not have standing to challenge any violation of these mortgage terms." *Pike Holdings, LLC v. Brighthouse Life Ins. Co.*, No. 3D24-2292, 2025 WL 3466842, at *1 (Fla. 3d DCA Dec. 3, 2025) [50 Fla. L. Weekly D2585a], quoting *Clay Cnty. Land Tr. No. 08-04-25-0078-014-27, Orange Park Tr. Services, LLC v. JPMorgan Chase Bank, Nat. Ass'n*, 152 So.3d 83, 84 (Fla. 1st DCA 2014) [39 Fla. L. Weekly D2433a].[2]

The defendants are heirs to the borrower; heirs to the person who entered into the contract. They were not "parties to the contract."

Rouffe v. CitiMortgage, Inc., 241 So.3d 870, 872-73 (Fla. 4th DCA 2018) [43 Fla. L. Weekly D631a] specifically addresses heirs in this regard:

> We affirm the trial court's ruling for two reasons: (1) the Heirs did not have standing to challenge the borrower's liabilities under the note and mortgage. . .see also *Pealer v. Wilmington Tr. Nat'l Ass'n for MFRA Tr.*, 212 So.3d 1137, 1139 (Fla. 2d DCA 2017) [42 Fla. L. Weekly D646c] ("At no time were the Pealers parties to the note and mortgage. As such, the Pealers' interest is limited to their possession of the property and is subordinate to the bank's interest, which stems from the note and mortgage. Therefore, the Pealers may participate in the bank's foreclosure proceedings only to the extent that they plan to exercise their statutory right of redemption. . . ."). We hold that since the Heirs were not parties to the note and mortgage in this case, they lack standing to challenge the borrower's rights and liabilities under the contract as opposed to challenging only the amount of damages. *Clay Cty.*, 152 So.3d at 84; *Pealer*, 212 So.3d at 1139.

Defendants argue that HUD regulations rise to the level of "statutory conditions precedent" and, thus, must be complied with for all FHA-insured loans, despite the privity rule above.

However, the cases relied upon by defendants have mortgage contracts that "incorporate" HUD regulations into the mortgage. That is what makes the regulations so forceful. They become conditions of the contract, not because they are stand-alone semi-statutory prerequisites. *Harris v. U.S. Bank Nat'l Ass'n*, 223 So.3d 1030, 1031 (Fla. 1st DCA 2017) [42 Fla. L. Weekly D588b]; *Lakeview Loan Servicing, LLC v. Walcott-Barr*, 307 So.3d 705, 710 (Fla. 4th DCA 2020) [45 Fla. L. Weekly D2346a]. Most importantly, none of the cases relied on by defendants involve an heir. They all involve parties in privity.[3]

Plaintiff cites a myriad of authorities to establish the fact that violations of these regulations are not a path to invalidation of foreclosure. They are separately enforced by monetary sanctions.

Accordingly, it is ORDERED and ADJUDGED that the motion is GRANTED. The defense is STRICKEN.

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[1]Specifically, defendants assert: Defendant Derrick Bradley was the primary caregiver for his mother during the last years of her life. Ms. Bradley gave her son a third-party authorization to speak to the Plaintiff on her behalf as she was unable to do so herself_ Mn Bradley (1) denies that the Plaintiff sent his mother a Delinquency Notice Cover Letter and the "Save Your Home" brochure required by 24 CFR 203.602; (2) denies that the Plaintiff conducted or made a "reasonable effort" to arrange pre-foreclosure counseling with his mother as required by 24 CFR 203.604 and (3) denies that the Plaintiff reviewed his mother for loss mitigation as required by 2.4 CFR 203.605."

[2]However, there could be other challenges available, as with a subsequent purchaser. *See Green Emerald Homes, LLC v. 21st Mortgage Corp.*, 300 So.3d 698, 709 (Fla. 2d DCA 2019) [44 Fla. L. Weekly D1449b] ("we hold that as the owner of the mortgaged property who took title before the filing of the lis pendens, Green Emerald was entitled to insist that 21st Mortgage present competent substantial evidence of the amount due under the note."). Also, a subsequent purchaser may challenge a foreclosure plaintiff's standing to foreclose because otherwise a subsequent purchaser would never have the ability to defend against the taking of a bona fide interest in the property through a foreclosure sale. *Green Emerald Homes, LLC v. 21st Mortgage Corp.*, 300 So.3d 698, 705-07 (Fla. 2d DCA 2019) [44 Fla. L. Weekly D1449b], citing *3709 N. Flagler Drive Prodigy Land Tr. v. Bank of Am., N.A.*, 226 So.3d 1040, 1042 (Fla. 4th DCA 2017) [42 Fla. L. Weekly D1924a].

[3]The Court would note that, given the language of 24 CFR 203.500, defendants' argument may be creative or novel, but it is not unreasonable. In fact, both counsel have done excellent work briefing this multifaceted issue.

* * *

Attorney's fees—Real property—Partition—Plaintiff's requests for costs, including attorney's fees, related to her defenses to defendant's counterclaim is denied where those defenses sought to obtain credits or setoffs after ownership interests had been established by agreement and were not of benefit to the partition—Likewise, request for costs related to plaintiff's discovery of defendant's financial information is denied because discovery was not of benefit to the partition

VERONICA BENJAMIN, Plaintiff, v. JAHMAL BESLEY, Defendant. Circuit Court, 2nd Judicial Circuit in and for Gadsden County. Case No. 20-2025-CA-000195-AXXX-CX. March 17, 2026. David Frank, Judge. Counsel: Phelicia D. Stiell, Tallahassee, for Plaintiff. Hubert B. Stivers, Levine & Stivers, LLC, Tallahassee, for Defendant.

ORDER ON PLAINTIFF'S MOTION FOR ATTORNEY'S FEES

This cause came before the Court for hearing on February 17, 2026, and the Court having reviewed the papers filed in support and opposition and the court file, considered evidence, heard argument of counsel, and being otherwise fully advised in the premises, finds

First, neither party has engaged in frivolous or vexatious litigation during this partition action.

The controlling statute is Florida Statute 64.081, which reads:

> Every party shall be bound by the judgment to pay a share of the costs, including attorneys' fees to plaintiff's or defendant's attorneys or to each of them ***commensurate with their services rendered and of benefit to the partition***, to be determined on equitable principles in proportion to the party's interest. Such judgment is binding on all his or her goods and chattels, lands, or tenements. In case of sale the court may order the costs and fees to be paid or retained out of the moneys arising from the sale and due to the parties who ought to pay the same. All taxes, state, county, and municipal, due thereon at the time of the sale, shall be paid out of the purchase money. (Emphasis added).

Unfortunately, the operative statute and case law do not provide very helpful guidance on the provision that attorneys' fees are paid from the proceeds, "commensurate with their services rendered and of benefit to the partition."

It appears the Court has discretion to apply undefined equitable principles. For example, *Casiano v. Casiano*, 370 So.3d 991, 995 (Fla. 5th DCA 2023) [48 Fla. L. Weekly D1341a], relied upon by defendant, (incorrectly cited as So.2d), noted:

> While entitlement (and responsibility) is resolved as a matter of law by the statute, the amount of attorneys' fees to be apportioned amongst the parties, however, is within the discretion of the trial court. *Fernandez-Fox v. Reyes*, 79 So. 3d 895, 896 (Fla. 5th DCA 2012) [37 Fla. L. Weekly D424a]. Trial courts are to determine the amount of fees owed by each party upon "equitable principles in proportion to the party's interest." § 64.081, Fla. Stat. "The [apportionment] is based upon the service performed, the responsibility incurred, the nature of the service, the skill required, the circumstances under which it was rendered, the customary charges for like service, the amount involved, and the ability of litigants to respond . . . ." *Fernandez-Fox*, 79 So. 3d at 896 (internal quotations and citations omitted).

The *Casiano* court then punts and simply says it cannot analyze the ruling below due to a lack of transcript: "Without an adequate record before us, we are unable to review the equitable considerations presented to and considered by the trial court bearing on its apportionment of fees and costs amongst the parties." *Id*.

The other authority relied upon by defendant is equally unhelpful. The court in *Cauble v. Kaczmarski*, 421 So.3d 776, 778 (Fla. 3d DCA 2025) [50 Fla. L. Weekly D2067a], reh'g denied (Oct. 23, 2025)

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states, "We summarily affirm on all grounds, save the allocation of carrying costs and preclusion of expert testimony on fair rental value."

The cases cited by the plaintiff are similarly unhelpful. Take *Monroe v. Birdsey*, 136 So. 886 (Fla. 1931).[1] First, it confirms, ". . .every party in interest shall be required to pay a portion of the costs and charges, including the fee of complainant's solicitor, in proportion to his interest." Here, that would be 50-50, and that is not in dispute. It tells us what goes into determining the "customary fee," as did *Casiano* above. But is says nothing about "of the benefit."

Interestingly, *Monroe* does include this statement, "When the title to lands involved in a partition suit is not in litigation, and the sole question presented is that of making a fair allotment, the value of the lands has little or no place in determining a proper fee to be allowed." *Id*. That seems to support defendant's argument that only "the allotment" matters, and the allotment was undisputed.

Diaz v. Sec. Union Title Ins. Co., 639 So.2d 1004 (Fla. 3d DCA 1994), appears to echo what we are told in *Monroe*, but uses the phrase "to establish or protect title." Specifically:

> In order to seek partition, the claimant must show title or a right to partition. To prove title in a partition proceeding, prior actions may have been instituted to establish or protect title to the property. These actions may therefore be deemed to be "of benefit to the partition." § 64.081, Fla.Stat. (1993). We determine that the actions taken here to establish the estate's interest in probate court and to defeat the reformation suit are "of benefit to the partition." Consequently, attorneys' fees for both actions are also to be paid under the partition statute.

Id. at 1006. Again, the costs that were approved were for establishing the interest in the property, even though that was fought in the probate case. In the present case, there was no fight as to ownership interest.

Finally, plaintiff relies on *Fernandez-Fox v. Reyes*, 79 So.3d 895, 897 (Fla. 5th DCA 2012) [37 Fla. L. Weekly D424a] (incorrectly cited as So.2d). Again, the issue in *Fernandez-Fox* was allotment or title ownership:

> Here, the court reasoned that because Fox's first three counts essentially sought full title in herself and she had sought partition only in the alternative, it was Reyes who was the impetus for the partition action because he had sought only partition. The trial court concluded, therefore, that only Reyes was entitled to fees. We disagree.
>
> Reyes was not the "impetus" for the partition, contrary to the trial court's conclusion, but rather it was Fox who first pled for partition, albeit in the alternative. After Fox suffered the partial summary judgment on her first three counts, ***all that was left was a trial to take evidence on the monetary claims each side was making for maintenance, etc., because, after the accounting, both sides were in agreement that partition was appropriate***. Hence, we believe that both Fox's attorney and Reyes rendered services of benefit to the partition portion of the suit. Reyes would have provided greater services because he had to defend and overcome Fox's first three counts to even get the case into partition posture, but that fact does not preclude Fox's attorney from receiving some award of fees based solely on the acts he or she took towards partition. We, therefore, conclude that the court erred by failing to make any determination regarding the amount of attorney's fees Fox's attorney earned advancing her partition count. (Emphasis added).

In the present case, both parties sought the partition of the real property. In response to defendant's counterclaim, plaintiff asserted four affirmative defenses: (1) plaintiffs claim for a credit for the down payment, (2) allegation that defendant engaged in inequitable or unfair conduct (3) that defendant's purchases/additions to the property were gifts, and (4) defendant has misrepresented or concealed facts in order to obtain exclusive use and possession of the property.

None of these defenses were "of benefit to the partition," as discussed above. Instead, they were positions taken by the plaintiff to obtain credits or setoffs, after ownership interest had been established by agreement.

In addition, plaintiff's discovery on the issue of defendant's income, deeds to any other real estate owned by him, loan applications, and financial statements were not of benefit to the partition.

Accordingly, it is ORDERED and ADJUDGED that

1. Plaintiff's request for costs, to included attorney's fees, for work related to her affirmative defenses listed above, and discovery on defendant's financial information, is DENIED as not of benefit to the partition.

2. With this guidance, the parties will confer within ten (10) days of the date of this order and agree on the amount and payment of costs, to include reasonable attorneys' fees, in this case. If an agreement cannot be reached, the plaintiff will contact the Judicial Assistant and set a hearing on amount and apportionment.

---

[1]The statute has been amended several times since the opinion was issued.

* * *

Civil procedure—Default—Damages—Unliquidated damages—Summary judgment—Defaulted defendant is entitled to notice and opportunity to defend claim for unliquidated damages—Motion for final summary judgment is denied

US BANK NATIONAL ASSOCIATION, Plaintiff, v. TAMICA JACKSON, et al., Defendants. Circuit Court, 2nd Judicial Circuit in and for Gadsden County. Case No. 20-2024-CA-000301-AXXX-CX. February 3, 2026. David Frank, Judge. Counsel: Ivy J. Taub, Robertson, Anschultz, Schneid, Crane & Partners, PLLC, Boca Raton, for Plaintiff.

[Prior sanction order at 31 Fla. L. Weekly Supp. 117b]

ORDER DENYING FINAL SUMMARY JUDGMENT, SETTING FINAL EVIDENTIARY HEARING, AND VACATING IN PART ORDER PROHIBITING DEFENDANT JACKSON FROM FILING PAPERS WITHOUT THE SIGNATURE OF AN ATTORNEY

This cause came before the Court for hearing on February 3, 2026 on plaintiff's motion for final summary judgment, and the Court having reviewed the papers filed in support and opposition and the court file, heard argument of plaintiff's counsel, and being otherwise fully advised in the premises, it is ORDERED and ADJUDGED that

1. The summary judgment motion is DENIED. As a defaulted defendant, Ms. Jackson is entitled to notice and to defend on unliquidated damages. That means a final evidentiary hearing, not summary judgment. *Mosia v. Foglia*, 418 So.3d 635, 639 (Fla. 4th DCA 2025) [50 Fla. L. Weekly D1667b] ("Such notice and opportunity to he heard includes 'the presentation and evaluation of evidence necessary to a judicial determination of the amount of [those] damages.' "): *Emami v. Progressive Brands, Inc.*, 225 So. 3d 983, 987 (Fla. 3d DCA 2017) [42 Fla. L. Weekly D1967a], citing *Belcourt v. Haraczka*, 987 So.2d 175, 176 (Fla. 1st DCA 2008) [33 Fla. L. Weekly D1801a]. The requirement of a trial to assess unliquidated damages after a default is not new to Florida law. In *Watson v. Seat*, 8 Fla. 446, 447 (1859), the Florida Supreme Court deemed this to be a established "point of practice...consonant with reason, justice, and law."

2. The final evidentiary hearing is SET for March 24, 2026, at 1:30 p.m., via Zoom. See Court's Policies and Procedures for Zoom information.

3. This Court's previous order sanctioning Ms. Jackson for abusive pro se litigation, that prohibited her from filing any paper without the signature of an attorney, is VACATED ***to the extent Ms. Jackson is defending herself in the present foreclosure matter.***

* * *

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Evidence—Motion in limine—Scope—Boilerplate motion in limine asking court to remind opposing counsel not to violate evidence code is denied—Motions in limine are for evidentiary errors that are anticipated, and it is not obvious from record or motion that there is any reason to anticipate that opposing counsel will violate clear, indisputable evidentiary rules

ZAM ZAM KAHIN, as PR OF EST. OF HUSSEN ALI JIBRIL, Plaintiff, v. ZAG TRANSPORT, INC., Defendant. Circuit Court, 2nd Judicial Circuit in and for Gadsden County. Case No. 20-2023-CA-000571-AXXX-XX. March 3, 2026. David Frank, Judge. Counsel: Clayton R. Syfrett, Panama City, for Plaintiff. Randall G. Rogers, Cole, Scott & Kissane, P.A., Pensacola, for Defendant.

ORDER ON DEFENDANT ZAG TRANSPORT'S OMNIBUS MOTION IN LIMINE

This cause came before the Court on defendant's February 26, 2026 motion, and the Court having reviewed the papers filed in support and opposition and the court file, and being otherwise fully advised in the premises, it is ORDERED that

The motion is DENIED. The motion is a classic shotgun, boilerplate request for a court order to admonish the other side by reminding them of 16 things that are unquestionably improper and, thus, a warning not to do them—improper character evidence, golden rule violations, offers to compromise, etc. . That is not the purpose of a motion in limine. Motions in limine are for evidentiary errors *that are anticipated*. Ehrhardt on Evidence, Section 104.5, FN1, citing *Luce v. U.S.*, 469 U.S. 38 (1984). If there is any reason to *anticipate* plaintiff's counsel violating well established, clear, and indisputable rules, it certainly is not obvious from the record in this case or the motion itself.

Rather than granting the motion, the Court will handle the request as follows: all lawyers in this case are instructed not to violate the Florida Evidence Code.

Should defendants or any party feel the need to have an order in advance that prohibits the obvious, the Court would be glad to enter an *agreed* order, emailed to the Judicial Assistant. The Court, however, will not allocate scarce time and resources to a hearing. Agreeing to the indisputable is something lawyers should be well equipped to do as a matter of professional courtesy.

* * *

Uniform Commercial Code—Sales—Revocation of acceptance—Bifurcation of trial—Revocation of acceptance is equitable remedy—Bifurcation of equitable claims for separate non-jury determination is appropriate

RYAN PERSAUD, Plaintiff, v. GULF COAST AUTO BROKERS, INC., a Florida corporation, and GROW FINANCIAL CREDIT UNION, a Federal credit union, Defendants. Circuit Court, 12th Judicial Circuit in and for Sarasota County, Civil Division. Case No. 2023-CA-006884-NC. March 2, 2026. Hunter W. Carroll, Judge. Counsel: Joshua Feygin, Joshua Feygin, PLLC, Hollywood, for Plaintiff.

ORDER GRANTING PLAINTIFF'S MOTION TO BIFURCATE TRIAL AS TO COUNT 8 -REVOCATION OF ACCEPTANCE

THIS CAUSE came before the Court on Plaintiff's Motion to Bifurcate Trial as to Count 8- Revocation of Acceptance [DE 329]. The Court conducted a hearing on March 2, 2026. Attorney Joshua Feygin appeared on behalf of Plaintiff. No appearance was made on behalf of Defendants despite proper notice.

The Court, having reviewed the Motion and the court file, and being otherwise fully advised, finds:

1. Count 8 asserts a claim for Revocation of Acceptance under section 672.608, Florida Statutes.

2. Revocation of acceptance is an equitable remedy. *See Peppler v. Kasual Kreations, Inc.*, 416 So. 2d 864 (Fla. 3d DCA 1982); *Tom Bush Volkswagen, Inc. v. Kuntz*, 429 So. 2d 398 (Fla. 1st DCA 1983); *B.P. Dev. & Mgmt. Corp. v. P. Lafer Enters., Inc.*, 538 So. 2d 1379 (Fla. 5th DCA 1989).

3. Under Article I, section 22 of the Florida Constitution, purely equitable claims are not triable by jury.

4. Florida Rule of Civil Procedure 1.270(b) authorizes separate trials of claims to avoid prejudice and for convenience.

5. Bifurcation of equitable claims from legal claims is appropriate. *Commodore Plaza at Century 21 Condo. Ass'n v. Century 21 Commodore Plaza, Inc.*, 290 So. 2d 539 (Fla. 3d DCA 1974).

6. The Court finds that bifurcation of the revocation claim for separate non-jury determination is appropriate for convenience and to avoid prejudice.

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

A. Plaintiff's Motion to Bifurcate Trial as to Revocation of Acceptance [DE 329] is **GRANTED**.

B. Count 8 shall be tried separately in a non-jury proceeding before the Court.

* * *

Child custody—Temporary custody by extended family—Abuse, abandonment, or neglect—Undocumented alien—Private petition for temporary custody of minor child who is undocumented immigrant filed shortly before child's eighteenth birthday, alleging abandonment and neglect by parents in foreign country and seeking "best interest" finding related to non-reunification and non-return to home country is denied—Record does not establish present threat requiring relief where alleged abuse, neglect, or abandonment by father and stepmother occurred many years ago in Ecuador, there is no custody dispute since father consents to petition, and child has safely resided with brother for over two years—Fact that child will reach majority within days, coupled with fact that brother seeks custody "until age 21," demonstrates that relief is not directed at present custodial necessity but at obtaining immigration benefits

ESTIVAN DIAZ, Petitioner, v. ANGEL DIAZ, Respondent. Circuit Court, 17th Judicial Circuit in and for Broward County. Case No. FMCE25022992 (41). March 2, 2026. Marlon J. Weiss, Judge.

ORDER DENYING PETITION FOR TEMPORARY CUSTODY AND DENYING REQUEST FOR "BEST INTEREST" FINDINGS

THIS CAUSE came before the Court upon the unopposed Petition for Temporary Custody by Extended Family pursuant to Chapter 751, Fla. Stat., filed by Estiven Diaz ("Petition"), and the accompanying motion seeking "best interest" findings related to non-reunification and non-return to Ecuador ("Motion"). The Court held an evidentiary hearing on February 11, 2026 in which the Petitioner and child testified. After hearing argument of counsel, and having reviewed the Petition and Motion, and all other materials in the court file, the Court **DENIES** the Petition and Motion.

INTRODUCTION

Florida circuit courts are empowered to resolve controversies arising under Florida law—not federal immigration law. While state courts may, in appropriate circumstances, enter factual findings that have collateral consequences under federal immigration law, custody petitions are not to be used as instruments for the primary purpose of manufacturing immigration benefits. Unfortunately, that is exactly the situation presented here. Petitioner has sought temporary custody of his 17-year-old brother, M.D., who reaches the age of majority in just 2 weeks. The Petition serves no purpose other than to obtain fact findings that are tailor-made for federal immigration court as to whether M.D. should be returned to his home country, which is Ecuador. As observed by the Fourth District: "At their core, these petitions are probably best described as merely an unopposed request

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for the assistance of the court . . . for entry of orders to help a child obtain legal immigration status." *O.I.C.L. v. Dep't of Child. & Fams.*, 169 So. 3d 1244, 1247 (Fla. 4th DCA 2015) [40 Fla. L. Weekly D1690a] (citations and quotations omitted). Indeed, the Motion expressly seeks findings under 8 U.S.C. §1101(a)(27)(J), which is the Special Immigration Juvenile Status provision of federal law.

The Court declines Petitioner's invitation. Given that no bona fide custodial controversy exists, and the minor is on the cusp of majority, the Court concludes that Chapter 751 relief may not be invoked solely to obtain findings tailored to achieve federal immigration advantages. The statutory framework at issue here exists to resolve genuine custody disputes and protect children—not to serve as a procedural gateway to obtain advisory immigration determinations.

PROCEDURAL POSTURE AND FINDINGS OF FACT

1. The Petitioner, Estiven Diaz, is the adult brother of the minor child, M.D., born [omitted], 2008, in Huaquillas, Ecuador. M.D. will attain the age of eighteen (18) within approximately two weeks.

2. The Petition was filed on December 29, 2025, pursuant to Chapter 751, Florida Statutes.

3. M.D. has resided with Petitioner in Davie, Florida since July 2023.

4. The Petitioner describes historical allegations of abuse, neglect, and abandonment by the father and stepmother while the child resided in Ecuador, more than 2 years ago.

5. The child's mother is deceased. The child's father, Angel Diaz, resides in Ecuador and consents to temporary custody.

6. The Petition expressly requests temporary custody "until the child reaches the age of 21."

7. A separately-filed motion seeks findings that reunification is not viable due to abuse, abandonment, or neglect and that it is not in the minor's best interest to be returned to Ecuador, referencing 8 U.S.C. § 1101(a)(27)(J) and §39.5075, Florida Statutes.

8. The record reflects that the minor has been in the uninterrupted custody of the Petitioner since July 2023 in Florida and is not alleged to be in present danger.

9. Following an evidentiary hearing held February 11, 2026, the Court deferred ruling and directed Petitioner to file a status report regarding his intention to continue pursuing relief under Chapter 751 no later than February 26, 2026. Petitioner failed to do so.

ANALYSIS

Chapter 751 provides a mechanism for extended family members to obtain temporary custodial authority where necessary for a child's care and stability. The "best interests" test applies and a petitioner must show "the consent of the child's parents, or the specific acts or omissions of the parents which demonstrate that the parents have abused, abandoned, or neglected the child as defined in chapter 39." Fla. Stat. § 751.03. The statute is remedial in nature and requires a showing of custodial need.

Here, the minor has resided safely with the Petitioner for over two years. The father has consented to the requested arrangement. There is no pending custody dispute and no allegation of current harm requiring judicial intervention. Even accepting the historical allegations as pled, they concern events occurring in Ecuador many years earlier. As such, the record does not establish a present threat requiring relief under Chapter 751. *Cf. B.C. v. Dep't of Children & Families*, 846 So.2d 1273, 1274 (Fla. 4th DCA 2003) [28 Fla. L. Weekly D1378b] (stating, in dependency context, that "the parents' harmful behavior must be a present threat to the child").

Significantly, the child will reach the age of majority within days. This fact, coupled with Petitioner's request for custody "until age 21" underscores that the relief sought is not directed to present custodial necessity, but is transparently oriented toward obtaining immigration benefits. *See, e.g., O.I.C.L.,* 169 So. 3d at 1250 (recognizing "that judicial resources too often are being misused to obtain dependency orders for minors who are neither abused, neglected or abandoned, and who seek a dependency adjudication and best-interest order . . . because they want preferential immigration treatment without having to comply with the requirements of the customary legal immigration process"). Indeed, Petitioner's accompanying Motion seeks findings expressly tracking the language of 8 U.S.C. § 1101(a)(27)(J), which is the federal Special Immigrant Juvenile Status (SIJS) statute.

The Court acknowledges that, in properly-filed dependency or custody matters involving a genuine controversy, state courts may enter factual findings that later serve, incidentally, as predicate elements in federal immigration proceedings. *See* §39.5075, Fla. Stat. The Court, however, declines to convert this Florida custody proceeding into a federal immigration adjudication, where, on the record here, there is no current abuse, abandonment or neglect directed to the child—all of the apparent custodial misconduct occurred years in the past. "To take advantage of these provisions of federal law, private petitions are often filed seeking both a dependency adjudication and best-interest order. These petitions usually allege that the child had been 'abandoned, abused, or neglected' in their home country, §39.01(15)(a), many times in the months or years prior to the filing of the petition, sometimes including admissions in affidavits from parents in foreign countries to wrongful or neglectful acts." *O.I.C.L.*, 169 So. 3d 1244 (affirming denial of petition for dependency). So too here.

Importantly, the Fourth District has expressly cautioned trial courts when confronted with unopposed and unilateral petitions to "use the most caution to avoid being nothing more than a 'rubber-stamp' by routinely granting these requests." *Id.* at 1250. Such petitions "should be considered carefully and not simply decided for the sake of expediency or sympathy." *Id.* In discharging its statutory duty, this Court reiterates:

- The minor has been safely placed for over two years and is not at risk of imminent danger;
- The minor is within days of majority;
- There is no bona fide custody dispute;
- The father has consented to the petition, evidently admitting abuse, neglect and abandonment; and
- The findings requested are expressly tailored to federal immigration language.

In these circumstances, the Court concludes that there is a lack of a present custodial need under Fla. Stat. §751.03 and the standards of §39.5075 have not been met. The Petition exceeds the scope of State law and risks entangling this Court in immigration matters within the purview of the federal government. *E.g., In re B.R.C.M.*, 182 So. 3d 749, 751 (Fla. 3d DCA 2015) [41 Fla. L. Weekly D36b] (acknowledging that "the purpose of the dependency provisions of Chapter 39 . . . is not to facilitate the pursuit of Special Juvenile Immigrant Status, but rather to provide services to children who are truly abandoned, abused or neglected").[1] Accordingly, it is

ORDERED AND ADJUDGED that

1. The Petition for Temporary Custody by Extended Family Member is **DENIED**.

2. The request for findings pursuant to 8 U.S.C. §1101(a)(27)(J) and §39.5075, Florida Statutes, is **DENIED**.

3. This denial is without prejudice to any relief properly sought in a court of competent jurisdiction under applicable immigration law.

---

[1]Although this is not a dependency case, the temporary custody matter at issue here expressly invokes the "abuse, neglect or abandonment" provisions of Chapter 39.

* * *

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Criminal law—Search and seizure—Vehicle stop—Traffic infraction—Justification for traffic stop was not undermined by fact that stopping officer did not know or could not remember number of statute violated where state proved that defendant drove his vehicle across painted median barrier on divided highway and that this driving pattern violated section 316.090—Motion to suppress is denied

STATE OF FLORIDA, Plaintiff, v. MICHAEL EUGENE BROWN, Defendant. Circuit Court, 18th Judicial Circuit in and for Brevard County. Case No. 05-2020-MM-047191-A. March 5, 2026. David C. Koenig, Judge. Counsel: Jennifer Kalra, Assistant State Attorney, State Attorney's Office, Viera, for Plaintiff. Bryan Savy, West Melbourne, for Defendant.

ORDER DENYING MOTION TO SUPPRESS

THIS CAUSE came before the Court on February 26, 2026 for a hearing on the Defendant's Motion To Suppress. The court heard testimony from two Palm Bay Police Officers, received into evidence a short video and a photograph from Google Maps, and considered the arguments of counsel. The Google Map photograph depicts the portion of Palm Bay Road where the Defendant is alleged to have committed a traffic violation. As clarified at the hearing, the only question for the court is whether the State established that the Defendant did, in fact, commit a traffic violation which would justify the subsequent traffic stop. The court finds as follows:

1. Palm Bay Police Officer McDonald testified that he observed the Defendant cross a "painted median barrier" in violation of a Florida Statute prohibiting such driving behavior. Upon questioning, Officer McDonald stated that he did not know specifically what statute was violated. Nevertheless, using the Google Map photograph, Officer McDonald described how the Defendant drove his vehicle out of a parking lot and made a left turn on to Palm Bay Road. In making the left turn, the Defendant crossed a double yellow line dividing eastbound and westbound traffic on Palm Bay Road. At the point of crossing, these two yellow lines converged from a wider painted barrier that extended from a raised concrete and grass median barrier. Although Officer McDonald's testimony lacked detail and precision, the court found him credible and finds that the Defendant did engage in the driving pattern as described in the testimony.

2. The State's argument is that the above driving pattern justified the traffic stop because it was a violation of Florida Statute 316.090 which states:

> (1)?Whenever any highway has been divided into two or more roadways by leaving an intervening space or by a physical barrier or clearly indicated dividing section so constructed as to impede vehicular traffic, every vehicle shall be driven only upon the right-hand roadway unless directed or permitted to use another roadway by official traffic control devices or police officers.
>
> (2)?No vehicle shall be driven over, across, or within any such dividing space, barrier, or section, except through an opening in such physical barrier or dividing section or space or at a crossover or intersection as established, unless specifically authorized by public authority.
>
> (3)?A violation of this section is a noncriminal traffic infraction, punishable as a moving violation as provided in chapter 318.

3. Defense counsel argues that even if the Defendant had made the left hand turn as described by Officer McDonald this driving act does not violate any Florida Statute and therefore, the traffic stop was not justified. As noted earlier, Officer McDonald could not remember or did not know what Florida Statute the Defendant violated in making the left hand turn and crossing over the double yellow line. On cross examination, to further support this point, Defense counsel asked Officer McDonald if the violated statute was "not driving on a divided highway" (the title of Florida Statute 316.090 is "Driving on divided highways") , the Officer responded "no".

4. Although it would have clearly been a stronger case for the State if Officer McDonald knew or remembered the Florida Statute that he observed the Defendant violated and led to him to conducting the traffic stop, his failure in this regard is not fatal to the State's case. In *State v.Young*, 971 So. 2d 968 (Fla. 4th DCA 2008) [33 Fla. L. Weekly D133b], the appellate court set forth the applicable standard:

> "In examining the validity of a traffic stop under the Fourth Amendment, the correct test to be applied is whether the particular officer who initiated the traffic stop had an objectively reasonable basis for making the stop. The officer's reasons for a stop are immaterial and that stop is reasonable when the officer had probable cause to believe that a traffic violation occurred. The test . . . is whether an officer could have stopped the vehicle for a traffic infraction. Whether probable cause exists depends upon the reasonable conclusion to be drawn from the facts known to the arresting officer at the time of the arrest." *(internal citations and quotatin marks excluded)*

Young, 971 So. 2d @ 971.

Therefore, if the court finds that the State has met its burden in proving that the Defendant drove his vehicle as described by Officer McDonald and that the described driving pattern is prohibited by any Florida Statute, then the fact that Officer McDonald does not know or cannot remember the statute number does not defeat the State's position because the standard is an objective, not subjective, one.

5. The court finds that the Defendant violated Florida Statute 316.090 when he drove his vehicle over and across a "clearly indicated dividing section", to wit: the converging double yellow line. This justified the traffic stop. Therefore, the stop was reasonable and the Defendant's motion is **DENIED**.

* * *

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Volume 34, Number 1
May 29, 2026
Cite as 34 Fla. L. Weekly Supp. ____

Insurance—Homeowners—Fraud on court—Sanctions—Dismissal—Insurer was entitled to dismissal of complaint filed by attorney alleging insurer breached policy by failing to pay for wind damage allegedly sustained to insured property—Dismissal for fraud on court was warranted where clear and convincing evidence established that attorney did not have insured's permission to present demand for damages on behalf of insured, to serve notice of intent to initiate litigation, or to file complaint, and that attorney failed to notify insured of settlement offer

ANDREA ZUBERKA, Plaintiff, v. AMERICAN INTEGRITY INSURANCE COMPANY OF FLORIDA, Defendant. County Court, 4th Judicial Circuit in and for Duval County, County Civil Division. Case No. 16-2022-CC-003301. August 16, 2024. Emmett F. Ferguson III, Judge. Counsel: David R. Heil, for Plaintiff. Nikki E. Hawkins, Hamilton, Miller & Birthisel, LLP, Jacksonville, for Defendant.

ORDER GRANTING DEFENDANT'S MOTION TO DISMISS FOR FRAUD UPON THE COURT OR ALTERNATIVELY MOTION FOR SUMMARY JUDGMENT AND THE AWARD OF SANCTIONS FOR ATTORNEY FEES AND COSTS TO DEFENDANT

THIS CAUSE came before the Court pursuant to Defendant, AMERICAN INTEGRITY INSURANCE COMPANY OF FLORIDA's MOTION TO DISMISS FOR FRAUD UPON THE COURT OR ALTERNATIVELY MOTION FOR SUMMARY JUDGMENT AND THE AWARD OF SANCTIONS FOR ATTORNEY FEES AND COSTS TO DEFENDANT, filed on December 20, 2023. The Court having reviewed the Motion, pleadings, exhibits and after conducting an evidentiary hearing on June 18, 2024, considering the testimony of Andrea Zuberka, review of the affidavit and documents and being fully advised on the premises, finds as follows:

a. This matter sounds in breach of contract under a homeowner's policy of insurance for wind damage allegedly sustained to the insured property on or about July 22, 2021, but not reported to Defendant until December 22, 2021. ANDREA ZUBERKA (the "Insured") is the named insured for a policy of insurance issued by Defendant, AMERICAN INTEGRITY INSURANCE COMPANY OF FLORIDA.

b. ANDREA ZUBERKA testified that she purchased the property in 2017. At the pre-purchase inspection of the property, she was advised that the roof had 5 to 7 years of life. ANDREA ZUBERKA was aware that the roof of the property was old and it needed to be replaced. ANDREA ZUBERKA further testified that she has no knowledge of a weather-related event(s) causing damage to her roof at any time nor on the date(s) identified in the Complaint. These facts are not in dispute.

c. The roof on the property located at 5425 Oliver Street S., Jacksonville, FL 32211 was replaced on March 30, 2023, for the amount of $11,318.25 by Reliant Roofing. These facts are not in dispute.

d. ANDREA ZUBERKA stated in her interrogatory responses and in her testimony that she "didn't observe any [damage]" related to a loss. She did "not discover the loss" and that Beaver Homes Services provided her with the date of loss of June 27, 2020. These facts are not in dispute. Thus, any date of loss alleged in this matter and/or cause of loss alleged to have caused damage to the roof of the Property is based upon mere conjecture and/or speculation by both BEAVER HOMES and TODD ROMAZKO.

e. The Complaint filed by David Heil, Esq., on March 25, 2022, alleged that the property located at 5425 Oliver Street, South, Jacksonville, Florida (the Property") sustained "storm" damage on June 27, 2020. The Complaint further alleged that Defendant, AMERICAN INTEGRITY INSURANCE COMPANY OF FLORIDA breached its policy with ANDREA ZUBERKA by failing to pay for the roof. Finally, the Complaint alleged that "[i]t has been necessary for ANDREA ZUBERKA to retain the services of David R. Heil, P.A. and has agreed to pay for the fee for his services.'

f. On December 22, 2021, Beaver Homes solicited ANDREA ZUBERKA to conduct a roof inspection of the property and execute a Contract for Services.[1] ANDREA ZUBERKA was provided with the purported date of loss of July 22, 2021, by BEAVER HOMES (through a salesman who was soliciting business from her) with no correlation to her own personal knowledge of events occurring at her residence. These facts are not in dispute. Thus, any date of loss alleged in this matter and/or cause of loss alleged to have caused damage to the roof of the Property is based upon mere conjecture and/or speculation by BEAVER HOMES.

g. Beaver Homes secured the services of TODD ROMAZKO, INSURANCE CLAIM EXPERT, to conduct a second inspection of the property located at 5425 Oliver Street, South, Jacksonville, Florida. TODD ROMAZKO is a Public Adjuster, operating under the entity known as INSURANCE CLAIM EXPERT. This Public Adjuster inspection occurred on July 17, 2022. These facts are not in dispute.

h. ANDREA ZUBERKA testified that ROMAZKO did not review any related weather data with her. She was provided the purported date of loss of June 27, 2020, by TODD ROMAZKO. TODD ROMAZKO provided ANDREA ZUBERKA with no explanation for the second date of loss. These facts are not in dispute. Thus, any date of loss alleged in this matter and/or cause of loss alleged to have caused damage to the roof of the Property is based upon mere conjecture and/or speculation by TODD ROMAZKO.

i. There was no retainer agreement in place between ANDREA ZUBERKA and The Law Offices of David Heil. The testimony of ANDREA ZUBERKA directly refutes that the retainer agreement (attached as Exhibit "A" to "Plaintiff's Response to Defendant's Motion for Summary Judgment Fraud Upon the Court") was ever executed by ANDREA ZUBERKA.

j. David Heil, Esq., did not provide this Court with the original retainer agreement. The document itself contained no date of execution by ANDREA ZUBERKA. These facts are not in dispute.

k. ANDREA ZUBERKA did not receive a copy of the retainer agreement within three (3) days of execution and she did not receive a client statement of rights. These facts are not in dispute.

l. Moreover, the retainer agreement document itself contains statements regarding "claims filed after December 16, 2022." This language appears to be in reliance upon FS 627.70152, which was not in existence on January 19, 2022.[2] The retainer agreement at issue, stated as follows:

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FOR POLICIES ISSUED OR RENEWED BEFORE DECEMBER 16, 2022

I UNDERSTAND THAT THE ABOVE EMPLOYMENT IS UPON A CONTINGENT FEE BASIS AND IF NO RECOVERY IS MADE, I WILL NOT BE INDEBTED TO MY ATTORNEYS FOR ANY ATTORNEYS FEE OR COSTS FOR THE ABOVE-DESCRIBED REPRESENTATION. I UNDERSTAND THAT MY ATTORNEY WILL BE COMPENSATED AT THE STATED RATE OR AT A HIGHER RATE IF A COURT DEEMS IT APPROPIATE. FEES SHALL BE PAID PURSUANT TO FLORIDA STATUTE 627.428.

In the event that a combined offer is made to resolve this claim in an amount less than the total amount of the claim, attorney fees and costs, the client has the option to accept such offer and pay the attorney fees and costs out of the recovery at a rate not to exceed 33/13% if suit has not been filed or 40% of the gross recovery in the event that a lawsuit has been filed and there has been an answer to the lawsuit filed. Costs will be paid in addition to the attorney fees.

FOR POLICIES ISSUED OR RENEWED AFTER DECEMBER 16, 2022

I UNDERSTAND THAT THE ABOVE EMPLOYMENT IS UPON A CONTINGENT FEE BASIS AND IF NO RECOVERY IS MADE, I WILL NOT BE INDEBTED TO MY ATTORNEYS FOR ANY ATTORNEYS FEE OR COSTS FOR THE ABOVE-DESCRIBED REPRESENTATION.

I agree to pay my David R. Heil, P.A.

a. 25% of the gross recovery of any claim settled or resolved before a lawsuit is filed on my behalf,

b. 33 1/3% of the gross recovery of any claim settled or resolved after a lawsuit is filed and resolved before trial or through arbitration.

c. 40% of the gross recovery of any claim settled or resolved on the date a trial is to commence or after.

I further acknowledge that the aforesaid contingency fees are applicable solely to representation of me in the claim described above.

m. In order for the document presented as Exhibit "A" to "Plaintiff's Response to Defendant's Motion for Summary Judgment Fraud Upon the Court" to have been executed by ANDREA ZUBERKA, on January 19, 2022, David Heil, Esq., would have had to be clairvoyant as the language of FS627.70152 was not considered until a Special Session in the Florida legislature beginning on December 9, 2022, pursuant to the legislative history of the bill, admitted into evidence as Defendant's Exhibit 1, during the evidentiary hearing.

n. David Heil, Esq./ The Law Offices of David Heil had at its disposal a different retainer agreement for client retention, which predated December 16, 2022, as evidenced in Exhibit B, to The Sworn Statement of Andrea Zuberka filed with the Court on June 13, 2024.

o. The document provided as Exhibit "A" to Plaintiff's Response to Defendant's Motion for Summary Judgment Fraud Upon the Court" is further evidence of a concerted effort of fraud upon the Court.

p. The evidence revealed that David Heil, Esq./ The Law Offices of David Heil, did not seek permission nor did David Heil, Esq., have permission to present a demand for damages on behalf of ANDREA ZUBERKA, to Defendant, on January 19,2022.

q. The evidence revealed that David Heil, Esq./ The Law Offices of David Heil, did not seek permission nor did David Heil, Esq., have permission to serve a Notice of Intent to Initiate Litigation on behalf of ANDREA ZUBERKA, on March 8, 2022, to Defendant, AMERICAN INTEGRITY INSURANCE COMPANY OF FLORIDA.

r. The evidence revealed that David Heil, Esq./ The Law Offices of David Heil, failed to notify ANDREA ZUBERKA that Defendant had made an offer in the amount of $14,500 in response to the Notice of Intent to Initiate Litigation. Thus, ANDREA ZUBERKA was not afforded the opportunity to resolve this matter without litigation and Defendant incurred unnecessary and costly defense costs. ANDREA ZUBERKA testified that she would have accepted the $14,500.00 offer and avoided litigation entirely in this matter.

s. The evidence revealed that David Heil, Esq./ The Law Offices of David Heil, did not seek permission nor did David Heil, Esq., have permission to file the Complaint on March 25, 2022, initiating litigation in this matter, on behalf of ANDREA ZUBERKA.

t. FS 627.428 granted insured policyholders the right to reasonable attorneys' fees if they secured any amount in a lawsuit against their insurers. The Complaint filed on behalf of ANDREA ZUBERKA on March 25, 2022, sought attorney fees.

u. "A 'fraud on the court' occurs where it can be demonstrated, clearly and convincingly, that a party or parties have sentiently set-in motion some unconscionable scheme calculated to interfere with the judicial system's ability impartially to adjudicate a matter by improperly influencing the trier or unfairly hampering the presentation of the opposing party's claim or defense." *Pino v. Bank of New York Mellon,* 57 So. 3d 950, 954 (Fla. 4th DCA 2011) [36 Fla. L. Weekly D646a], *approved sub nom. Pino v. Bank of New York,* 121 So. 3d 23 (Fla. 2013) [38 Fla. L. Weekly S168a].

v. "A trial judge has the inherent authority to dismiss actions based on fraud on collusion." *DiStefano v. State Farm Mut. Auto. Ins. Co.,* 846 So.2d 572, 574 (Fla. 1st DCA 2003) [28 Fla. L. Weekly D1077a].

w. Courts have long "recognized and enforced the principle that a party who has been guilty of fraud or misconduct in the prosecution or defense of a civil proceeding should not be permitted to continue to employ the very institution it has subverted to achieve her ends." *Hanono v. Murphy,* 723 So.2d 892, 895 (Fla. 3d DCA 1998) [24 Fla. L. Weekly D95a]. A "trial court has the inherent authority, within sound judicial discretion, to dismiss an action when a plaintiff has perpetrated a fraud on the court." *Middleton v. Hager,* 179 So.3d 529, 532-533 (Fla.3d DCA 2015) [40 Fla. L. Weekly D2649c], *citing Cox v. Burke,* 706 So. 2d 43, 46 (Fla. 5th DCA 1998) [23 Fla. L. Weekly D299a]. However, "because 'dismissal sounds the death knell of the lawsuit,' courts must reserve such strong medicine for instances where the defaulting party's misconduct is correspondingly egregious." *Id.* (quoting *Aoude v. Mobil Oil Corp.,* 892 F. 2d 1115, 1118 (1st Cir. 1989). Fraud on the court occurs when clear and convincing evidence demonstrates "a party has sentiently set-in motion some unconscionable scheme calculated to interfere with the judicial system's ability impartially to adjudicate a matter by improperly influencing the trier of fact or unfairly hampering the presentation of the opposing party's claim or defense." *Wallace v. Keldie,* 249 So.3d 747, 754 (Fla. 1st DCA 2018) [43 Fla. L. Weekly D1358a].

x. There is no evidence of an attorney-client relationship between David Heil, Esq./ The Law Offices of David Heil, and ANDREA ZUBERKA. In fact, ZUBERKA repudiates that such a relationship was established. There was no evidence provided by David Heil, Esq./ The Law Offices of David Heil of communications with ANDREA ZUBERKA on January 19, 2022; March 8, 2022; March 23, 2022; April 11, 2022. Notably, ANDREA ZUBERKA, specifically denied any such communications took place. Moreover, there was no evidence presented that ANDREA ZUBERKA spoke with an individual by the name of DONNA (an employee of The Law Offices of David Heil). Again, ANDREA ZUBERKA, specifically denied any such communications took place.

y. In an effort extricate herself from an untenable situation, to wit, this litigation, ANDREA ZUBERKA testified that she reached out to multiple entities for assistance, to include the Department of Insurance Fraud and the Office of the Chief Financial Officer for the state of Florida where she executed an Affidavit confirming that David Heil, Esq./ The Law Offices of David Heil did not represent her in this matter.

z. A review of ANDREA ZUBERKA's responses to Defendant's Interrogatory questions reflects responses fatal to this litigated matter. Florida law requires that an insured making a claim under an all-risks policy has the burden of proving that the insured property suffered a loss while the policy was in effect. The burden then shifts to the insurer to prove that the cause of the loss was excluded from coverage under the policy's terms.); *Dias v. GeoVera Specialty Ins. Co.,* 543 F. Supp. 3d 1282 (M.D. Fla. June 14, 2021) (granting summary judgment to insurer because the plaintiffs only had conjecture as to when the loss occurred, and were therefore without admissible evidence that their roof damage was caused by a covered event during the policy period). See, e.g., *Mejia v. Citizens Prop. Ins. Corp.,* 161 So. 3d 576, 578 (Fla. 2d DCA 2014) [39 Fla. L. Weekly D2471a].

aa. The Court finds ANDREA ZUBERKA credible in her claim that she never authorized David Heil, Esq./ The Law Offices of David Heil to file a lawsuit on her behalf.

bb. Here, it was not Plaintiff herself perpetrating fraud upon the Court, but instead those representing her in this matter. ANDREA ZUBERKA fell victim to a scheme designed by BEAVER HOMES,

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TODD ROMAZKO AND DAVID HEIL for financial gain.

cc. David Heil, Esq./ The Law Offices of David Heil never should have filed the complaint; he had no attorney client relationship with ANDREA ZUBERKA, and he had no permission from ANDREA ZUBERKA to act on her behalf. The Complaint contains false allegations which are not related to some collateral matter. ANDREA ZUBERKA testified that she did not want to sue her insurance carrier, Defendant, AMERICAN INTEGRITY INSURANCE COMPANY OF FLORIDA.

dd. David Heil, Esq./ The Law Offices of David Heil knew or should have known that he was filing a meritless lawsuit. Had he actually established an attorney-client relationship with ANDREA ZUBERKA he would have assuredly learned that ANDREA ZUBERKA did not wish to suit her insurance carrier.

ee. Nevertheless, David Heil, Esq./ The Law Offices of David Heil continued in his pursuit to prosecute this lawsuit. As a result, Defendant, AMERICAN INTEGRITY INSURANCE COMPANY OF FLORIDA has unnecessarily incurred legal expenses.

ff. On October 17, 2023, Mr. Rob Condon of the Office of Chief Financial Officer Jimmy Patronis made an internal referral to the Division of Investigative and Financial Services (DIFS) for alleged fraud regarding this matter. Exhibit "V" to Defendant, AMERICAN INTEGRITY INSURANCE COMPANY OF FLORIDA's MOTION TO DISMISS FOR FRAUD UPON THE COURT OR ALTERNATIVELY MOTION FOR SUMMARY JUDGMENT AND THE AWARD OF SANCTIONS FOR ATTORNEY FEES AND COSTS TO DEFENDANT.

THEREFORE, based upon the exhibits and testimony and the case law cited above the Court finds fraud upon the Court and this dismissal is warranted. In view of the above, it is **ORDERED**:

1. Defendant's MOTION TO DISMISS FOR FRAUD UPON THE COURT OR ALTERNATIVELY MOTION FOR SUMMARY JUDGMENT AND THE AWARD OF SANCTIONS FOR ATTORNEY FEES AND COSTS TO DEFENDANT, filed on December 20, 2023, is **GRANTED.**

2. The Court reserves ruling as to any award of fees for Defendant or the imposition of Sanctions.

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[1]Effective July 1, 2021, SB76, prohibited entities such as BEAVER HOMEs from advertising, soliciting, offering to handle, handling, or performing public adjuster (PA) services without a license.

[2]FS627.70152 was signed into existence by Governor Ron DeSantis on December 16, 2022. The retainer agreement attached to the "Plaintiff's Response to Defendant's Motion for Summary Judgment Fraud Upon the Court" attached as Exhibit "A," clearly references "claims after December 16, 2022" the triggering date for FS 627.70152, which addressed attorney fees in first party property claims in the state of Florida. Senate Bill 2A made a clear statement by revising Florida Statute Sections 627.428 and 626.9373, expressly stating that "there is no right to attorney fees" in a suit arising under a residential or commercial property insurance policy. Furthermore, the bill removed references to attorneys' fees from the pre-suit notice provision found in Section 627.70152, effectively eliminating its use as a fee-shifting mechanism.

* * *

Insurance—Homeowners—Fraud on court—Sanctions—Attorney's fees—Attorney's attempt to represent insured without her knowledge or consent—Sanctions—Attorney's fees, costs, expert fees, and prejudgment interest—Amount of fees, costs, and interest calculated

ANDREA ZUBERKA, Plaintiff, v. AMERICAN INTEGRITY INSURANCE COMPANY OF FLORIDA, Defendant. County Court, 4th Judicial Circuit in and for Duval County, Circuit Civil Division. Case No. 16-2022-CC-003301. March 5, 2026. Emmet F. Ferguson, III, Judge. Counsel: David R. Heil, for Plaintiff. Nikki Hawkins, Hamilton, Miller & Birthisel, LLP, Jacksonville, for Defendant.

FINAL ORDER TAXING SANCTIONS AGAINST DAVID R. HEIL, ESQ., AND DAVID R. HEIL LAW FIRM FOR FRAUD UPON THE COURT AND ENTITLEMENT TO ATTORNEY FEES AND COSTS

THIS CAUSE having come before this Court on DEFENDANT'S AMENDED MOTION FOR ORDER TO DETERMINE AMOUNT OF SANCTIONS AND / OR ALTERNATIVELY FOR ENTITLEMENT TO FEES AND COSTS against DAVID R. HEIL, ESQ., and DAVID R. HEIL LAW FIRM and the Court Having Considered the Testimony and Exhibits at the January 14, 2026 Evidentiary Hearing, and this Court, being fully advised in the premises, it is hereby:

ORDERED AND ADJUDGED.

1. The instant cause arises out of a first party claim for insurance proceeds made under a homeowner's policy of insurance issued by Defendant to the Insured, ANDREA ZUBERKA.

2. Through the course of litigation, Defendant uncovered a fraudulent scheme for monetary gain entered into by Heil, Romazko and Beaver Homes Services to defraud, AMERICAN INTEGRITY INSURANCE COMPANY OF FLORIDA, Zuberka's insurance carrier.

3. On August 16, 2024, this Court entered an Order GRANTING Defendant's Motion to Dismiss for Fraud Upon the Court or Alternatively Motion for Summary Judgment and the Award of Sanctions for Attorney Fees and Costs to Defendant. This Court found that the clear and convincing evidence reveals that Attorney Heil was attempting to represent ANDREA ZUBEKA without her knowledge or consent and initiated the instant lawsuit against Defendant without the knowledge and consent of ANDREA ZUBEKA.

4. Defendant is the prevailing party in this matter.

5. It is well-settled in Florida that a party who has been guilty of fraud or misconduct in the prosecution or defense of a civil proceeding is not permitted to continue to employ the very institution she has subverted to achieve her ends. Accordingly, a trial court has the authority to impose sanctions on a party that perpetrates a fraud on the court, which includes striking that party's pleadings and entering a default judgment against that party. However, the power of the court to impose sanctions under these circumstances should be exercised with great restraint and should be used only upon the most blatant showing of fraud, pretense, collusion, or other similar wrongdoing. The court should consider the proper mix of factors and carefully balance a policy favoring adjudication on the merits with competing policies to maintain the integrity of the judicial system. Of significance, the court's finding of fraud must be supported by clear and convincing evidence that goes to the very core issue at trial. *Martinez v. Bank of N.Y. Mellon*, 198 So. 3d 911, 912 (Fla. 3d DCA 2016) [41 Fla. L. Weekly D1717c].

6. Based upon the Court's Order dated August 16, 2024, Defendant is entitled to sanctions for attorney fees and costs incurred in the course of the defense of the non-meritorious and fraudulent claim.

7. In determining the fee customarily charged in the locality for similar legal services, the trial court did not abuse its discretion by concluding that the relevant legal community for an Engle progeny case tried in Jacksonville was the community of lawyers who try those cases in Jacksonville, no matter where counsel's primary office is located". *Philip Morris USA Inc., Appellant, v. Elaine Jordan, Appellee.* 1st District. Case No. 1D20-360, 47 Fla. L. Weekly D259a."

8. The burden to substantiate a fee award rests on the movant party's attorney. *See City of Miami v. Harris*, 490 So.2d 69, 73 (Fla. 3rd DCA 1985). The reconstruction of records may be permitted when the fee award is supported by substantial competent evidence. *Id.* An award of fee based on reconstructed records must be substantiated by something more that "wild guesses." *See Brake v. Murphy*, 736 So. 2d 745, 747 (Fla. 3rd DCA 1999) [24 Fla. L. Weekly D1443a].

9. "Thus, while reconstructed records can be used when they are supported by evidence, numbers plucked from the air and standing alone will not support a fee award." *Reuven T. Herssein v. AGA Service Company et al.*, 28 Fla. L. Weekly Supp. 411b (2020).

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10. The legal standard for computing an award of attorneys' fees is the lodestar approach, determined by the facts of the individual case. *See Fla. Patient's Compensation Fund v. Rowe*, 472 So. 2d 1145, 1150 (Fla. 1985). The court must first determine the number of hours reasonably expended on the litigation. *Id.* " 'Reasonably expended' means the time that ordinarily would be spent by lawyers in the community to resolve this particular type of dispute. It is *not* necessarily the number of hours actually expended by counsel in the case." *Centex.* 725 So. 2d at 1258 (*quoting In re Estate of Platt*, 586 So. 2d 328, 333-34 (Fla. 1991)). This may be determined in part by review of the billing records detailing the amount of work performed. *See Rowe.* 472 So. 2d at 1150. As set forth below, the Court has determined the reasonable hours expended by the Defendant's counsel.

11. Under the lodestar method, the fee applicant bears the burden of presenting satisfactory evidence to establish . . .that hours are reasonable *22nd Century Props., LLC v. FPH Props., LLC*, 160 So.3d 135, 142 (Fla. 4th DCA 2015) [40 Fla. L. Weekly D782a]; *Universal Property and Casualty Insurance Company v. Raghunath Deshpande*, 19-1566 (Fla. Dist. Ct. App. 2020) [45 Fla. L. Weekly D2511a]; *L.E.R.G. Medical Inc. v. Infinity Auto Insurance Company*, (Citation omitted); *Citizens Property Insurance Corporation v. Joseph Casanas and Nancy Cervantes*, 3D20-322, (Fla. 3rd DCA 2021) [46 Fla. L. Weekly D2324b].

12. Once the court determines the number of hours reasonably expended by the prevailing party, the court must next calculate a reasonable hourly rate for the services performed by the prevailing party's attorneys. *Id* The prevailing party has the burden of establishing the "market rate" (i.e. the rate charged in that community by lawyers of reasonably comparable skill, experience and reputation, for similar services), and may do so through presentation of an expert affidavit. *Id.* Also as set forth below, the Court has determined the reasonable hourly rates to be awarded in this matter for the timekeepers.

13. After the number of hours reasonably expended and the reasonable hourly rates have been determined by the Court, the Court must multiply the number of hours reasonably expended by the reasonable hourly rate to produce the lodestar. *See Rowe.* 472 So. 2d at 1151. The court may then adjust the lodestar up or down after considering the following factors:

> 1. The time and labor required, the novelty and difficulty of the question involved, and the skill requisite to perform the legal service properly;
> 2. The likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer;
> 3. The fee customarily charged in the locality for similar legal services;
> 4. The amount involved and the results obtained;
> 5. The time limitations imposed by the client or the circumstances;
> 6. The nature and length of the professional relationship with the client;
> 7. The experience, reputation, and ability of the lawyer or lawyers performing the services; and
> 8. Whether the fee is fixed or contingent.

Id.

14. "Although an attorney may be well experienced and respected in his field, his hourly rate must be consistent with the type of work performed in a particular case." *Pierre-Louis v. Baggage Airline Guest Services, Inc.,* 2021 WL 3710139, at *10 (S.D. Fla. 2021) (citing *Wendel v. Int'l Real Estate News, LLC,* No. 19-21658-CIV, 2019 WL 12278752, at *2 (S.D. Fla. Dec. 16, 2019), report and recommendation adopted sub nom. *Wendel v. Int'l Real Estate News, LLC,* No. 19-21658-CIV, 2020 WL 9552161 (S.D. Fla. Jan. 2, 2020)). "Simply put, an attorney's hourly rate must be commensurate with his or her experience, the prevailing market rate, and the complexity of the legal work performed." *Id.* (citing *Garcia v. Pajeoly Corp.,* No. 18-23399-CIV, 2020 WL 764127, at *3 (S.D. Fla. Jan. 10, 2020)).

15. In support of Defendant's Motion to Tax Sanctions for Fees and Costs, Defendant filed the affidavit of counsel Nikki Hawkins, Esq and an affidavit of Defendant's expert, Ms. Dawn Jayma.

16. An evidentiary hearing regarding the amount of sanctions for attorneys' fees and costs to be taxed against DAVID R. HEIL, Esq., and The Law Offices of David Heil, BEAVER HOMES SERVICES and TODD ROMAZKO d/b/a INSURANCE CLAIM EXPERT the was heard by the Court on January 14, 2026.

17. During the evidentiary hearing testimony was taken from Defendant's Expert, Ms. Dawn Jayma and the Corporate Representative of Defendant, AMERICAN INTEGRITY INSURANCE COMPANY OF FLORIDA, Mr. Bill Talley.

18. Defendant's expert, Dawn Jayma, testified to the reasonableness of the billing records as well as the current market rates of the attorneys and staff members involved. See, *Joyce v. Fed. Nat. Ins. Co.*; 228 So. 3d 1122 (Fla. 2017) [42 Fla. L. Weekly S852a]; *Fla. Patient's Comp. Fund v. Rowe*, 472 So. 2d 1145 (Fla. 1985); and *Standard Guar. Ins. Co. v. Quanstrom*, 555 So. 2d 828 (Fla. 1990); See also, *Philip Morris USA, Inc. v. Naugle*, 337 So. 3d 13, 18 (Fla. 4th DCA 2022) [47 Fla. L. Weekly D530a].

19. Defendant served DAVID R. HEIL, ESQ., and DAVID R. HEIL LAW FIRM, and TODD ROMAZKO D/B/A INSURANCE CLAIM EXPERT and BEAVER HOME SERVICES with the Notice of Hearing for the evidentiary hearing occurring on January 14, 2026.

20. Counsel DAVID R. HEIL, ESQ., appeared via telephone for the evidentiary hearing.

A. <u>PROCEDURAL BACKGROUND</u>

1. The instant cause arises out of a party claim for insurance proceeds made under a homeowner's policy of insurance issued by Defendant to the Insured, ANDREA ZUBERKA.

2. Counsel, DAVID R. HEIL on behalf of Plaintiff ANDREA ZUBERKA, asserted standing to maintain this action pursuant to a homeowner's policy for insurance between ANDREA ZUBERKA and Defendant, AMERICAN INTEGRITY INSURANCE COMPANY OF FLORIDA.

3. Defendant was served with the instant suit on April 8. 2022.

4. In response to Plaintiff's Complaint, Defendant filed its Motion to Dismiss or Alternatively Motion for More Definite Statement on June 6, 2022.

5. Thereafter, Attorney Heil filed an Amended Complaint on June 20, 2022; stating in pertinent part:

> "On June 27, 2020, Andrea Zuberka suffered a storm damage loss to her home as a result of a storm as evidenced by the attached estimate of damages. (Exhibit A)."

6. On September 30, 2022, Defendant filed its Answer and Affirmative Defenses to Plaintiff's Amended Complaint.

7. Specifically, Defendant pled, in part, the following affirmative defenses:

THIRTEENTH AFFIRMATIVE DEFFENSE

> Plaintiff's claim is subject to the terms and conditions of the insurance policy for the reported date of loss issued by AMERICAN INTEGRITY bearing policy number AGH219591. Specifically, AMERICAN INTEGRITY does not waive its right to invoke the following policy provision:q
>
> 2. **Concealment or Fraud**.
>
> a. The entire policy will be void if, whether before or after a loss, any one or more "insureds", or "your" agent, representatives, and/or

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public adjusters in collusion with the "insured" have:

(1) Intentionally concealed or misrepresented any material fact or circumstance;
(2) Engaged in fraudulent conduct; or
(3) Made material false statements relating to this insurance.

b. We may deny recovery for a loss otherwise covered by this policy, if you or any "insured" has made a misrepresentation, omission, concealment of fact, or incorrect statement in an application for this policy, but only if

(1) The misrepresentation, omission, concealment or statement is fraudulent or is material either to the acceptance of the risk or to the hazard assumed by us.

(2) If the true facts had been known to us pursuant to a policy requirement or other requirement, we in good faith would not have issued a policy or contract, would not have issued it at the same premium rate, would not have issued a policy or contract in as large an amount or would not have provided coverage with respect to the hazard resulting in the loss.

This affirmative defense speaks for itself.

EIGHTEENTH AFFIRMATIVE DEFENSE

Plaintiff's claim against Defendant is barred from recovery, if any, for concealment or misrepresentation of materially false statements relating to this insurance policy contract.

TWENTIETH AFFIRMATIVE DEFENSE

Pursuant to section 57.105(1)(a) and (b), Plaintiff's Complaint is not supported by material facts necessary to establish a claim; nor is the claim supported by the application of existing law as applied to these material facts. Section 57.105(1), Florida Statute, provides in relevant part that, "upon . . . motion of any party, the court shall award reasonable attorney's fees to be paid to the prevailing party in equal amounts by the losing party and the losing party's attorney on any claim . . . at any time during a civil proceeding . . . in which the court finds that the losing party or losing party's attorney knew or should have known that a claim . . . when initially presented to the court or at any time before trial: (a) was not supported by the material facts necessary to establish the claim . . .; or (b) would not be supported by the application of then-existing law to those material facts." Plaintiff knew when filing the Amended Complaint that Defendant's Claim Number CHO-00120874 was assigned to Plaintiff's reported claim with a date of loss on July 22, 2021.

8. Plaintiff filed no response to Defendant's Affirmative Defenses.

9. On February 10, 2023, Defendant filed its Motion for Judgment on the Pleadings, stating in part that (paraphrased) Claim Number CHO-00120874 was assigned to Plaintiff's reported claim with a date of loss on July 22, 2021 and Defendant's claim decision for that claim was not a denial."

10. A hearing on Defendant's Motion for Judgment on the Pleadings occurred on June 6, 2023. An Order denying Defendant's Motion for Judgment on the Pleadings was entered on June 21, 2023, which found that "Defendant failed to bring any evidence to support any of its allegations in their Motion for Judgement on the Pleadings."

11. Defendant served its Proposal for Settlement to Plaintiff on June 9, 2023.

12. Plaintiff was never advised of the Proposal for Settlement by Counsel, DAVID R. HEIL.

13. Based upon the documents, discovery, pleadings and testimony to date, a referral to the State of Florida Department of Insurance Fraud was made by Defendant, American Integrity Insurance Company on or about October 16, 2023, resulting in the DIF TIP number: T23-16331.

14. A referral to the State of Florida Department of Insurance Fraud was made by Rob Condon of the Chief Financial Office on or about October 17, 2023.

15. Defendant filed its MOTION TO DISMISS FOR FRAUD UPON THE COURT OR ALTERNATIVELY MOTION FOR SUMMARY JUDGMENT AND THE AWARD OF SANCTIONS FOR ATTORNEY FEES AND COSTS TO DEFENDANT AND MEMORANDUM OF LAW IN SUPPORT on December 20, 2023.

16. A hearing on Defendant's Motion occurred before this Honorable Court on June 18, 2024.

17. In the hearing on Defendant's MOTION TO DISMISS FOR FRAUD UPON THE COURT OR ALTERNATIVELY MOTION FOR SUMMARY JUDGMENT AND THE AWARD OF SANCTIONS FOR ATTORNEY FEES AND COSTS TO DEFENDANT AND MEMORANDUM OF LAW IN SUPPORT, Counsel DAVID R. HEIL provided a document that he purported to be a "Retainer Agreement" executed by ANDREA ZUBERKA.

18. ZUBERKA testified before the Court that she had not seen the document before and that she had not executed the document.

19. Moreover, the document alleged to have been executed by ANDREA ZUBERKA was dated January 19, 2022 but contained language that did not exist in law, to wit FS 627.70152, until December 16, 2022.

20. In order for the document presented as Exhibit "A" to "Plaintiff's Response to Defendant's Motion for Summary Judgment Fraud Upon the Court" to have been executed by ANDREA ZUBERKA, on January 19, 2022, David Heil, Esq., would have had to be clairvoyant as the language of FS627.70152 was not contemplated until a Special Session in the Florida legislature beginning on December 9, 2022, pursuant to the legislative history of the bill, admitted into evidence as Defendant's Exhibit 1, during the evidentiary hearing.

21. The document provided as Exhibit "A" to Plaintiff's Response to Defendant's Motion for Summary Judgment Fraud Upon the Court" is further evidence of a concerted effort to commit fraud upon the Court.

22. Based upon the affidavit executed by ANDREA ZUBEKA and provided to Defendant and testimony of ANDREA ZUBEKA, it was abundantly clear that she was not represented by ATTORNEY DAVID HEIL at any point in time, in this matter, regardless of self-serving claims to the contrary by Attorney Heil.

23. On August 16, 2024, this Court entered an Order GRANTING Defendant's Motion to Dismiss for Fraud Upon the Court or Alternatively Motion for Summary Judgment and the Award of Sanctions for Attorney Fees and Costs to Defendant against DAVID R. HEIL, Esq., and The Law Offices of David Heil, BEAVER HOMES SERVICES and TODD ROMAZKO d/b/a INSURANCE CLAIM EXPERT.

24. Based upon the Court's Order dated August 16, 2024, Defendant is entitled to sanction for attorney fees and costs.

25. Following the Court's Order dated August 16, 2024, Counsel DAVID R. HEIL filed a "Motion for Rehearing."

26. In reply, ANDREA ZUBERKA submitted an affidavit dated September 9, 2024, to the Court stating in pertinent part, that:

a DAVID R. HEIL did not inform me of the Proposal for Settlement served by Defendant on June 9, 2023.

b DAVID R. HEIL did not consult with me prior to filing the Motion for Rehearing with the Court on August 23, 2024.

c DAVID R. HEIL did not have permission to file the Motion for Rehearing with the Court on August 23, 2024.

d I do not agree with the statements contained within the Motion for Rehearing filed with the Court on August 23, 2024

e I am not seeking a rehearing of the June 18, 2024 hearing and I agree with the Court's Order rendered on August 16, 2024.

27. On September 6, 2024, Defendant filed its Objection to, Motion to Strike and Response in Opposition to Motion for Rehearing Filed on August 23, 2024 and Request for Sanctions.

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28. DAVID R. HEIL was and is acting on his own behalf and self-interest which is clearly not in the best interests of nor on behalf of ANDREA ZUBERKA in bringing this frivolous "Motion for Rehearing."

29. This Court found that the clear and convincing evidence reveals that Attorney Heil was attempting to represent ANDREA ZUBEKA without her knowledge or consent and initiated the instant lawsuit against Defendant without the knowledge and consent of ANDREA ZUBEKA.

30. Moreover, Defendant is entitled to attorney fees pursuant to its §57.105 motion up to and including an award of entitlement based upon its Affirmative Defenses and the granting of the Motion to Dismiss for Fraud Upon the Court.

31. Counsel DAVID R. HEIL, Esq., refused to dismiss Plaintiff's unauthorized Complaint and thereby forced Defendant to unnecessarily incur greater fees in defending Plaintiff's alleged claim and ultimately obtaining judgment in its favor.

32. The proposal for settlement made by Defendant was reasonable and made in good faith. Plaintiff's failure to accept Defendant's proposal for settlement was unreasonable.

33. Florida Statute § 768.79(1) provides as follows:

> In any civil action for damages filed in the courts of this state, if a defendant files an offer of judgment which is not accepted by the plaintiff within 30 days, the defendant shall be entitled to recover reasonable costs and attorney's fees incurred by her or him or on the defendant's behalf pursuant to a policy of liability insurance or other contract from the date of filing of the offer if the judgment is one of no liability. . .

34. A "judgment obtained," for purposes of determining a party's liability for attorneys' fees after an offer of judgment is made, under Fla. Stat. ch. 768.79(6) (1993), is not limited to or equated solely with the amount of the judgment for damages. *White v. Steak & Ale of Fla.*, 816 So. 2d 546, 547 (Fla. 2002) [27 Fla. L. Weekly S331a].

B. ATTORNEY FEES

Defendant's Corporate Representative testified that this case presented issues far beyond those found in an everyday first party property matter. Instead, defense of this matter required a highly skilled attorney. He further testified that he would have paid up to $900.00 an hour, had he known from the onset that David R. Heil, Esq., had filed a lawsuit without Plaintiff's authorization, to secure an attorney with the experience necessary to defend this matter due to the specialized nature and unique issues presented.

Defendant's expert testified that the hourly rate charged by defense counsel was below the customary amount for rates charged in like and kind defense with an attorney of Defendant's counsel's caliber and experience. Therefore, Defendant's expert testified that the hourly rate charged by Defendant's counsel should be taxed at $650.00 per hour. Furthermore, she testified that sanctions are warranted in her opinion

Defendant's expert further testified that the hourly rate charged by defense paralegals was below the customary amount for rates charged in like and kind defense work. Therefore, Defendant's expert testified that the hourly rate charged by Defendant's counsel should be taxed at $125.00 per hour.

Rowe Factors

(1) The time and labor required, the novelty and difficulty of the question involved, and the skill requisite to perform the legal service properly.

FINDING: This Court finds this matter embodied novel and difficult questions of fact and law not typical in a first party property dispute. This case is both sophisticated and complicated. Additionally, this matter required a great deal of time and labor as it was litigated for a span greater than three (3) years. Defendant presented billing and time sheets kept in the normal course of business to establish the amount of hours worked and the amount of attorney fees incurred in the course of litigation of this matter spanning over three years along with expert testimony.

(2) The likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer.

FINDING: This Court finds this matter ultimately prevented counsel from engaging in the defense of other employment matters given the issues involved which required Defense counsel to engage outside agencies such as the Chief Financial Officer and Department of Insurance Fraud for the state of Florida. This matter involved contentious and lengthy litigation over a number of years.

(3) The fee customarily charged in the locality for similar legal services.

FINDING: This Court adopts Defendant's expert's opinion and finds that it is a customary charge for attorney fees in the locality for similar legal services is the hourly rate of $650.00 per hour for this type of litigation.

(4) The amount involved and the results obtained.

FINDING: The amount involved was significant because the dispute involved property along with interest and attorney fees and cost exposure. Defendant is the prevailing party to this action.

(5) The time limitations imposed by the client or the circumstances.

FINDING: The time limits imposed on Defendant's counsel were demanding given the issues involved the coordination with multiple state agencies and the pending trial order deadlines.

(6) The nature and length of the professional relationship with the client.

FINDING: Defendant and its counsel had a business relationship.

(7) The experience, reputation, and ability of the lawyer or lawyers performing the services; and

FINDING: Attorney Hawkins is a highly qualified attorney who possesses a substantial amount of experience and expertise in civil litigation and specifically insurance related matters. She was barred in 2009; after working for eighteen years within the insurance industry to include time working for Special Investigations and medical billing fraud. Attorney Hawkins performed consistently with the type of work expected to be performed in this particular case: She has tried numerous cases to verdict and successfully argued motions for summary judgment. She is a Partner and the Chair of the Property Division at Hamilton Miller Birthisel law firm. Ms. Hawkins presents insurance and civil defense strategies around the country.

(8) Whether the fee is fixed or contingent.

FINDING: The contractual fee was fixed However, sanctions are appropriate given the finding of the existence of the Order finding a fraudulent scheme for monetary gain entered into by Heil, Romazko and Beaver Homes Services to defraud, AMERICAN INTEGRITY INSURANCE COMPANY OF FLORIDA, Zuberka's insurance carrier.

Counsel Heil presented no evidence to the contrary of Defendant's Expert's testimony regarding the reasonableness of the imputed hourly rate of Defendant's counsel's experience. Additionally, Plaintiff presented no evidence as to Defendant's Expert's testimony to show that the reasonableness of the imputed hourly rate of paralegal work in defense of this matter was unreasonable.

The Court adopts the opinion of Defendant's expert and finds that the amount of $121,310.00 to be reasonable attorney fees in defense of this matter.

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The Court adopts the opinion of Defendant's expert and finds that the number of hours spent in defense of this matter to be reasonable and attorney and paralegal fees in the amount of $121,310.00 will be taxed in favor of Defendant and Against Counsel, DAVID R. HEIL, Esq., and The Law Offices of David Heil.

C. COSTS

Applicability for the Uniform Guidelines for Taxation of Costs in Civil Actions.

In an offer of judgment case, only taxable costs are recoverable. *C&S Chemicals, Inc. v. McDougald*, 754 So.2d 795, 797 (Fla. 2d DCA 2000) [25 Fla. L. Weekly D780b]. Recoverable costs are those that were "reasonably necessary" to the *Amendments to Unif. Guidelines for Taxation of Costs*, 915 So. 2d 612, 616 (Fla. 2005) [30 Fla. L. Weekly S797a] (per curiam)(Appendix). Of the "reasonably necessary" costs that a party incurs, the Florida Supreme Court has identified the following categories of costs as those that "should be" awarded upon a motion to tax costs:

1) Depositions: the original and one copy of the deposition transcript, as well as the court reporter's per diem.

2) Court Reporting: the court reporter's per diem for the reporting of evidentiary hearings.

3) Expert Witnesses: A reasonable fee for deposition and/or trial testimony.

4) Documents and Exhibits: The costs of copies of documents filed with the court which are reasonably necessary to assist the court in reaching a conclusion.

Although the Court has discretion in the taxation of **costs**, the exercise of this discretion is governed by the applicable case law and is influenced by the *Uniform Guidelines.* Plaintiff has not presented a persuasive rationale for the Court to deviate from the *Uniform Guidelines* and the Court declines to do so. *Borja v. NationsBank of Florida, N.A.,* 730 So.2d 799 (Fla. 3d DCA 1999) [24 Fla. L. Weekly D843c].

Counsel Heil has not provided evidence showing that Defendant's costs were unreasonable nor raised a reasonable objection thereto.

The Court finds that costs were reasonable and shall be taxed against Counsel, DAVID R. HEIL, Esq., and The Law Offices of David Heil, in the amount of $5,773.44.

D. DEFENDANT'S EXPERT FEES

The Court finds these fees to be reasonable, and they will be taxed in the amount of $395.00 per hour and shall be taxed in the amount of $10,697.00.

E. INTEREST

Pursuant to *Quality Engineered Installation, Inc. v. Higley S., Inc,* 670 So. 2d 929 (Fla. 1996) [21 Fla. L. Weekly S141a], interest accrues from the date of entitlement to attorney fees is fixed through agreement, arbitration award, or court determination, even though the amount of the award has not yet been determined.

The Court determines that interest is applicable in this matter.

F. FINAL AWARD:

Attorney and paralegal fees:	$121,310.00
Costs	$ 5,773.44
Expert Costs	$ 10,697.00
Prejudgment Interest calculated from 8/16/2024 to 1/14/2026[1]	$ 18,284.29
TOTAL FINAL AWARD:	**$156,064.73**

Payment shall be made within 30 days.

This Court retains jurisdiction to enforce payment of the final award.

[1]Pursuant to Fla. Stat. § 55.03; *Wells v. Halmac Dev., Inc.*, 184 So. 3d 620, 621 (Fla. 3d DCA 2016) [41 Fla. L. Weekly D325a].

* * *

Civil procedure—Service of process—Substitute service—Motion to quash service of process granted where it is undisputed that defendant was not resident of service address at time of purported substitute service on co-resident

JP MORGAN CHASE BANK, N.A., Plaintiff, v. RICHARD L. FEHNEL, Defendant. County Court, 7th Judicial Circuit in and for Volusia County. Case No. 2025-15510-CODL. February 26, 2026. Michele S. Simonsen, Judge. Counsel: Juan Andreu, Miami, for Plaintiff. Alex McClure, Law Office of Alex McClure, Lake Mary, for Defendant.

ORDER GRANTING DEFENDANT'S MOTION TO QUASH SERVICE OF PROCESS

This cause came before the Court on February 10, 2026, at a duly noticed hearing on Defendant Richard L. Fehnel's Motion to Quash Service of Process and Memorandum of Law in Support Thereof (DIN # 10). After considering the moving papers, the record in the case, and the argument of counsel the Court finds as follows:

On June 25, 2025, a Sheriff's Return of Service was filed reflecting that substitute service was purportedly effected on Defendant on June 12, 2025. (DIN #8,9). Said Return of Service reflects that "Richard Rambarran" was purportedly served at 2043 Little Farms Ct. Deltona, FL 32738 and further states ". . .DROP SERVED AT FRONT DOOR. ID BY FL DL PHOTO." *Id.* This type of service is colloquially known as substitute service via a spouse or co-resident.

§48.031 Fla. Stat. provides in pertinent part:

> 48.031 Service of process generally; service of witness subpoenas.—
> (1)(a) Service of original process is made by delivering a copy of it to the person to be served with a copy of the complaint, petition, or other initial pleading or paper or by leaving the copies at his or her usual place of abode with any person residing therein who is 15 years of age or older and informing the person of their contents. Minors who are or have been married shall be served as provided in this section.

When a party is served pursuant to §48.031 via a co-resident or spouse, it is required that the individual served actually resides at the service address. *Shurman v. Atlantic Mortg. & Inv. Corp.*, 795 So.2d 952 (Fla. 2001) [26 Fla. L. Weekly S574a] citing *State ex rel. Merritt v. Heffernan*, 195 So. 145, 147 (Fla. 1940). The *Shurman* court went on to say:

> [W]e adhere to *Heffernan* and reaffirm that for purposes of substituted service one's "usual place of abode" is where the person is actually living at the time of service. In this case, it is uncontroverted that Shurman was actually living in prison at the time substituted service was made on his wife at their marital residence.
> *Id*.

"The word 'abode' means 'one's fixed place of residence for the time being when service is made.' If a person has more than one residence, he must be served at the residence in which he is actually living at the time of service." *Torres v. Arnco Constr., Inc.*, 867 So.2d 583, 586 (Fla. 5th DCA 2004) [29 Fla. L. Weekly D579a] quoting *State ex rel. Merritt v. Heffernan*, 142 Fla. 496, 195 So. 145, 147 (1940). "[B]ecause statutes authorizing substituted service are exceptions to the general rule requiring a defendant to be served personally, due process requires strict compliance with their statutory requirements." *Torres,* 867 So.2d at 586.

Defendant has provided sworn testimony (DIN #10, Exhibit A) that he was not a resident of the service address at the time of the purported service and had never resided at 2043 Little Farms Ct. Deltona, FL 32738. There is nothing in the record which suggests

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otherwise.

It is well settled that the fundamental purpose of service is "to give proper notice to the defendant in the case that he is answerable to the claim of plaintiff and, therefore, to vest jurisdiction in the court entertaining the controversy." *State ex rel. Merritt v. Heffernan,* 195 So. 145, 147 (Fla. 1940).

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

Defendant Richard L. Fehnel's Motion to Quash Service of Process and Memorandum of Law in Support Thereof (DIN # 10) is **GRANTED**.

The June 12, 2025, Return of Service (DIN #8,9) is **QUASHED.**

The limited appearance of Alex McClure, Esq. on behalf of Defendant is **TERMINATED.**

* * *

Creditors' rights—Garnishment—Exemptions—Objection—Claim of exemption granted and writ of garnishment dissolved where objector failed to establish personal knowledge of matters at issue and objected only to an exemption that was not claimed

EQUABLE ASCENT FINANCIAL, LLC, Plaintiff, v. DANNY R. DORSEY, Defendant. County Court, 7th Judicial Circuit in and for Volusia County. Case No. 2010 34278 COCI. Division 82. March 3, 2026. Bryan A. Feigenbaum, Judge. Counsel: Jennifer Cruz Mesa, Hayt, Hayt, & Landau, P.L., Miami, for Plaintiff. Keith Petrochko, My Affordable Attorney, Daytona Beach, for Defendant.

ORDER ON DEFENDANT'S VERIFIED CLAIM OF EXEMPTION DISSOLVING WRIT OF GARNISHMENT

THIS CAUSE having come before the Court on March 2, 2026, upon Defendant's Verified Claim of Exemption and ore tenus Motion to Strike Plaintiff's Objection, and the Court having considered said Motion, having heard argument of counsel, and being otherwise fully advised in the premises, finds as follows:

1. Defendant claims exemptions pursuant to 42 U.S.C. § 407; Fla. Stat. §§ 121.131 and 222.21; and Article X, § 4(a)(2) of the Florida Constitution. Defendant further claims exemption of the non-debtor spouse's one-half ownership interest as joint tenancy with right of survivorship in the frozen accounts.

2. Plaintiff's objection to the verified motion fails to establish personal knowledge of the matters at issue. Additionally, Plaintiff's motion objects only to a Fla. Stat. § 222.11 exemption—an exemption which has not been claimed by the Defendant.

3. Fla. Stat. § 77.041(3) provides, in pertinent part, that: "If the plaintiff or the plaintiff's attorney does not file a sworn written statement that answers the defendant's claim of exemption . . . no hearing is required and the clerk must automatically dissolve the writ . . ."

4. Plaintiff's objection does not "answer the defendant's claim of exemption."

THEREFORE, IT IS HEREBY ORDERED THAT:

i. The Plaintiff's objection is STRUCK;

ii. Defendant's claim of exemption is GRANTED;

iii. The Writ of Garnishment dated January 12, 2026 is hereby DISSOLVED;

iv. The Garnishee, Truist Bank, is directed to immediately release all restrained funds to the Defendant.

* * *

Attorney's fees—Insurance—Personal injury protection—Declaratory judgment—Insured is entitled to attorney's fees and costs incurred in declaratory action filed after insurer made total coverage denial of claim where action resulted in insurer's payment of disputed medical expenses

MARIE V. DORCELY LOUISSAINT, Plaintiff, v. UNITED AUTOMOBILE INSURANCE COMPANY, Defendant. County Court, 9th Judicial Circuit in and for Orange County. Case No. 2025-CC-005671-O. February 25, 2026. Adam McGinnis, Judge. Counsel: Pamela Rakow-Smith, Eiffert & Associates, P.A., Orlando, for Plaintiff. Wallace Richardson, Law Offices of Harris, White and Whittingham, for Defendant.

ORDER GRANTING PLAINTIFF'S MOTION TO DETERMINE ENTITLEMENT TO ATTORNEY'S FEES AND COSTS AND MOTION TO TAX FEES AND COSTS

THIS MATTER came before the Court on January 22, 2026, on Plaintiff's Motion to Determine Entitlement to Attorney's Fees and Costs and Motion to Tax Fees and Costs, filed pursuant to Florida Statutes §§86.121, 57.041, 86.081, 92.231, and Florida Rules of Civil Procedure 1.525 and, the Court having reviewed the Motion, the record and having heard argument of counsel, and being otherwise being fully advised in the premises, hereby finds and orders as follows:

FINDINGS OF FACT

1. On March 17, 2025, Plaintiff filed this declaratory judgment action against Defendant following Defendant's total coverage denial of multiple claims for Personal Injury Protection (PIP) benefits arising out of Plaintiff's January 13, 2024 motor vehicle accident.

2. Plaintiff's medical providers, All-Starr Healthcare & Rehab Center, LLC and Clear View Diagnostic Corp., timely submitted claims for PIP benefits to Defendant.

3. Defendant issued a complete denial of coverage for those claims, marking them as "Denied" on the Explanation of Benefits (EOBs), and communicated to Plaintiff in response to its demand letter that "no additional payments are due."

4. On November 21, 2025, after the lawsuit was filed and served, Defendant reversed its coverage position and paid the previously denied claims.

CONCLUSIONS OF LAW

5. Florida Statute § 86.121 provides that, in an action for declaratory relief, when an insurer makes a total coverage denial of a claim, the court shall award reasonable attorney's fees to the insured upon the rendition of a declaratory judgment in favor of the insured. The statute's use of the mandatory term "shall" creates non-discretionary entitlement to attorney's fees.

6. The Court finds that the Legislature's use of the indefinite article "a" claim, as opposed to "the" claim, indicates that the statute applies when the insurer makes a total coverage denial as to any claim, and does not require a denial of coverage for the entire claim or accident. *Covey v. Shaffer*, 277 So. 3d 694 (Fla. 2d DCA 2019) [44 Fla. L. Weekly D1713a].

7. Under Florida's No-Fault law, medical providers are to submit bills on a Health Insurance Claim Form (CMS 1500). Each bill is a separate and distinct claim submitted for payment and each submission constitutes a separate "claim" under Florida law. *See* Fla. Stat. § 627.6131(2); §§ 627.736(4), (5), (15). A denial of one or more bills satisfies the statute's requirement for a "total coverage denial of a claim."

8. Florida courts have consistently held that each denied medical claim or benefit is a separate cause of action, and a total coverage denial of a claim does not require denial of all coverage under the policy. *State Farm Mut. Auto. Ins. Co. v. Lee*, 678 So. 2d 818 (Fla. 1996) [21 Fla. L. Weekly S335a]; *State Farm Mut. Auto. Ins. Co. v. Yenke*, 804 So. 2d 429 (Fla. 5th DCA 2001) [26 Fla. L. Weekly D2521a]; *Union Indem. Co. v. Vetter*, 143 So. 869 (Fla. 1932).

9. In *Juan Calderon v. Geico Casualty Co.*, 32 Fla. L. Weekly Supp. 437b (Fla. 13th Jud. Cir. 2024), the Court held that an insurer's denial of a medical provider's PIP bills constituted a total coverage denial of a claim under Fla. Stat.§ 86.121 and awarded attorney's fees

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where the insurer afforded coverage only after suit was filed. The Court expressly rejected the argument that a total coverage denial requires denial of all benefits under the policy.

10. Here, as in *Calderon*, Defendant denied multiple CMS 1500 claims and advised that no additional payments were owed and maintained its denial of coverage until after suit was filed and litigated. *Id.*

11. Defendant's post-suit payment of the previously denied claims constitutes a confession of judgment under Florida law. *Wollard v. Lloyds of London*, 439 So. 2d 217 (Fla. 1983); *Johnson v. Omega Ins. Co.*, 200 So. 3d 1207 (Fla. 2016) [41 Fla. L. Weekly S415a]; *Allstate Fire & Cas. Ins. Co. v. Castro*, 351 So. 3d 127 (Fla. 1st DCA 2022) [47 Fla. L. Weekly D2314b]; *Juan Calderon v. Geico Casualty Co.,* 32 Fla. L. Weekly Supp. 437b (Fla. 13th Jud. Cir. 2024). A confession of judgment entitles Plaintiff to attorney's fees under § 86.121 as a matter of law.

12. Therefore, Defendant's total coverage denial of multiple claims, followed by post-suit payment, falls squarely within the scope of §86.121 and establishes Plaintiff's entitlement to attorney's fees and costs.

Based on the foregoing, it is hereby **ORDERED AND ADJUDGED** as follows:

13. Plaintiff's Motion to Determine Entitlement to Attorney's Fees and Costs and Motion to Tax Fees and Costs is **GRANTED** as to entitlement.

14. Plaintiff is entitled to recover reasonable attorney's fees and costs pursuant to Florida Statutes §§ 86.121, 57.041, 86.081, and 92.231, arising from Defendant's total coverage denial of one or more claims and Defendant's post-suit payment.

15. The Court reserves jurisdiction to determine the reasonable amount of attorney's fees, costs, expert costs, witness fees and any applicable pre-judgment interest.

16. The specific amount of attorney's fees and costs shall be determined at an evidentiary hearing.

17. The Parties shall coordinate and schedule an evidentiary fee hearing before this Court.

* * *

Attorney's fees—Insurance—Personal injury protection—Declaratory judgment—Insured is entitled to attorney's fees and costs incurred in declaratory action filed after insurer made total coverage denial of claim where action resulted in settlement which required insurer to pay disputed medical expenses

WILBERT SYLVERA, Plaintiff, v. UNITED AUTOMOBILE INSURANCE COMPANY, Defendant. County Court, 9th Judicial Circuit in and for Orange County. Case No. 2025-CC-005680-O. March 4, 2026. Jeanette D. Bigney, Judge. Counsel: Pamela Rakow-Smith, Eiffert & Associates, P.A., Orlando, for Plaintiff. Wallace Richardson, Law Offices of Harris, White and Whittingham, for Defendant.

ORDER GRANTING PLAINTIFF'S MOTION TO DETERMINE ENTITLEMENT TO ATTORNEY'S FEES AND COSTS AND MOTION TO TAX FEES AND COSTS

THIS MATTER came before the Court on February 23, 2026 on Plaintiff's Motion to Determine Entitlement to Attorney's Fees and Costs and Motion to Tax Fees and Costs, filed pursuant to Florida Statutes §§86.121, 57.041, 86.081, 92.231, and Florida Rules of Civil Procedure 1.525 and, the Court having reviewed the Motion, the record and having heard arguments of counsel, and being otherwise fully advised in the premises, hereby finds and orders as follows:

FINDINGS OF FACT

1. On March 17, 2025, Plaintiff filed this declaratory judgment action against Defendant following Defendant's total coverage denial of multiple claims for Personal Injury Protection (PIP) benefits arising out of Plaintiff's January 13, 2024 motor vehicle accident.

2. Plaintiff's medical provider, All-Starr Healthcare & Rehab Center, LLC. timely submitted claims for PIP benefits to Defendant on Health Insurance Claim Forms (HCFA/CMS-1500 forms) for dates of service from January through April of 2024, each constituting a separate claim for payment.

3. Defendant issued a complete denial of coverage for one or more of those claims, marking them as "Denied" on the Explanation of Benefits (EOBs), and communicated to Plaintiff in response to its demand letter that "no additional payments are due."

4. Defendant maintained its denial of coverage until after the lawsuit was filed and served.

5. On November 21, 2025, after the lawsuit was filed and served, Defendant reversed its coverage position and paid the previously denied claims. A notice of settlement was subsequently filed with the court. It is clear from the record that Defendant made payments as a condition of the settlement after the suit was initiated.

6. Based upon the denials reflected in the record and the subsequent post-suit payment of the previously denied claim(s), the Court finds that there was a total coverage denial as to a claim submitted.

7. At the hearing, Defendant did not object to Plaintiff's entitlement to taxable costs.

CONCLUSIONS OF LAW

8. The Court relies on the plain language of Florida Statutes §§ 86.121, 627.6131, and 627.736 (2025).

9. Florida Statute § 86.121 provides that, in an action for declaratory relief, when an insurer makes a total coverage denial of a claim, the court shall award reasonable attorney's fees to the insured upon the rendition of a declaratory judgment in favor of the insured. The statute's use of the mandatory term "shall" creates non-discretionary entitlement to attorney's fees.

10. The Legislature's use of the phrase "a claim" in §86.121 means that a total coverage denial as to any individual claim is sufficient to trigger entitlement; it does not require a denial of all benefits under the policy. *See e.g. Covey v. Shaffer*, 277 So. 3d 694 (Fla. 2d DCA 2019) [44 Fla. L. Weekly D1713a].

11. Under Florida's No-Fault law, medical providers are to submit bills on a Health Insurance Claim Form (CMS 1500). Each bill is a separate and distinct claim submitted for payment and each submission constitutes a separate "claim" under Florida law. *See* Fla. Stat. § 627.6131(2); §§ 627.736(4), (5), (15). A denial of one or more bills satisfies the statute's requirement for a "total coverage denial of a claim."

12. Based upon the record, Defendant denied at least one HCFA/CMS-1500 claim and advised that no additional payments were owed and maintained its denial of coverage until after the lawsuit was filed.

13. Defendant's post-suit payment of the previously denied claims constitutes a confession of judgment under Florida law. *Wollard v. Lloyds of London*, 439 So. 2d 217 (Fla. 1983); *Johnson v. Omega Ins. Co.*, 200 So. 3d 1207 (Fla. 2016) [41 Fla. L. Weekly S415a]; *Allstate Fire & Cas. Ins. Co. v. Castro*, 351 So. 3d 127 (Fla. 1st DCA 2022) [47 Fla. L. Weekly D2314b]; *Juan Calderon v. Geico Casualty Co.*, 32 Fla. L. Weekly Supp. 437b (Fla. 13th Jud. Cir. 2024). A confession of judgment entitles Plaintiff to attorney's fees under § 86.121 as a matter of law.

14. Accordingly, Defendant's total coverage denial of a claim, followed by post-suit payment, falls squarely within the scope of §86.121 and establishes Plaintiff's entitlement to attorney's fees and costs.

Based on the foregoing, it is hereby **ORDERED AND ADJUDGED** as follows:

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15. Plaintiff's Motion to Tax Costs is **GRANTED**. There being no objection to entitlement to costs, Plaintiff is entitled to recover taxable costs.

16. Plaintiff's Motion to Determine Entitlement to Attorney's Fees is **GRANTED**.

17. Defendant's Motion to Strike Plaintiff's Claim for Attorney's Fees is hereby **DENIED**.

18. Plaintiff is entitled to recover reasonable attorney's fees and costs pursuant to Florida Statutes §§ 86.121, 57.041, 86.081, and 92.231, arising from Defendant's total coverage denial of one or more claims and Defendant's post-suit payment.

19. The Court reserves jurisdiction to determine the reasonable amount of attorney's fees, costs, expert costs, witness fees and any applicable pre judgment interest.

20. The specific amount of attorney's fees and costs shall be determined at an evidentiary hearing.

21. The Parties shall coordinate and schedule an evidentiary fee hearing before this Court.

* * *

Insurance—Personal injury protection—Coverage—Conditions precedent—Examination under oath—Insured failed to satisfy requirements of PIP policy and section 627.736(6)(g) to "submit to" and "complete" EUO and provide requested documentation where insured appeared for EUO but failed to produce requested documents, failed to answer relevant questions on advice of counsel, and gave vague answers or could not recall information regarding his treatment and prior accidents—No merit to argument that lengthy duration of EUO equals compliance—Court, not jury, determines relevance of questions posed—Questions were relevant; but even if they were not, insured waived any possible objections by failing to specify them during EUO—Insurer was not required to reschedule EUO or move to compel answers following noncompliance—Final summary judgment entered in favor of insurer

GINA MEDICAL CENTER, INC., Plaintiff, v. STATE FARM FIRE AND CASUALTY INSURANCE COMPANY, Defendant. County Court, 11th Judicial Circuit in and for Miami-Dade County. Case No. 2024-157012-SP-23. Section CG01. February 23, 2026. Jorge A. Perez Santiago, Judge. Counsel: Edersy Suarez, The Law Office of Edersy Suarez, PA, Miami Lakes, for Plaintiff. Paul Michael Gabe, Kubicki Draper, Miami, for Defendant.

ORDER GRANTING MOTION FOR SUMMARY JUDGMENT

THIS CAUSE came before the Court to be heard on December 16, 2025, on Defendant, STATE FARM FIRE & CASUALTY COMPANY's, Motion for Final Summary Judgment filed July 29, 2025 [DIN 44], and this Court, having reviewed the said Motion and the Response thereto untimely filed by Plaintiff, GINA MEDICAL CENTER, INC., on December 9, 2025 [DIN 59], and having heard the arguments of counsel at the hearing, and being otherwise well advised in the premises, finds and holds as follows:

LEGAL STANDARD

Summary judgment is warranted when the moving party "shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fla. R. Civ. P. 1.510(a); *see also Celotex Corp. v. Catrett,* 477 U.S. 317, 323 (1986).

The Court views the record in the light most favorable to the non-moving party. *See Matsushita Elec. Indus. Co., Ltd. v. Zenith Radio Corp.,* 475 U.S. 574, 587 (1986). The party seeking summary judgment "bears the initial responsibility of informing the Court of the basis for its motion, and identifying those portions of 'the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any,' which it believes demonstrate the absence of a genuine issue of material fact." *Celotex,* 477 U.S. at 323 (citing Fed. R. Civ. P. 56(c)).

Once the moving party has met its initial burden, the burden shifts to the non-moving party. *See Matsushita Elec. Indus. Co., Ltd.,* 475 U.S. at 586-87; *see also Anderson v. Liberty Lobby, Inc.,* 477 U.S. 242, 256 (1986). "[A] party opposing a properly supported motion for summary judgment may not rest upon mere allegation or denials of his pleading, but must set forth specific facts showing that there is a genuine issue for trial." *Anderson,* 477 U.S. at 256; *see also Matsushita Elec. Indus. Co., Ltd.,* 475 U.S. at 586-87.

Defendant met its initial burden. Plaintiff was charged with responding to Defendant's motion. It did not do so. Pursuant to Florida Rule of Civil Procedure 1.510, this Court considers the facts undisputed, and Defendant entitled to summary judgment for that reason alone. And even considering Plaintiff's arguments at the hearing, Defendant remains entitled to summary judgment as a matter of law.

UNDISPUTED MATERIAL FACTS

Defendant's motion for summary judgment, Plaintiff's response, the exhibits thereto, and the record evidence cited and/or submitted to the Court establish the following facts:

1. The Plaintiff medical provider seeks personal injury protection ("PIP") benefits under the Insured's policy of automobile insurance issued by the Defendant. [DIN 2; DIN 42].

2. The automobile accident giving rise to the PIP claim occurred on February 18, 2024. [DIN 2; DIN 42].

3. Plaintiff's amended complaint asserts that Defendant underpaid PIP benefits for the Insured's alleged medical treatment with Plaintiff's clinic for dates of service from February 20, 2024, to March 28, 2024. [DIN 42].

4. Defendant's answer denies Plaintiff's allegations and raises a number of affirmative defenses, including defenses based on the Insured's material and prejudicial breach of the subject insurance policy by failing to "submit to" or "complete" an examination under oath ("EUO") and/or failing to provide requested information and documentation, which Defendant asserts are conditions precedent under the policy and under §627.736(6)(g), Fla. Stat. [DIN 43].

5. Defendant then moved for summary judgment on these defenses. [DIN 44].

6. Defendant's motion argues that the Insured failed to submit to an EUO because although the Insured appeared for his pre-suit EUO, he failed to produce the requested documents and failed to answer so many questions that it was tantamount to failing to appear. Defendant explains that the Insured's counsel, who is also Plaintiff's counsel, instructed the Insured not to answer so many questions and categories of questions during the EUO that it stonewalled the examination. For example, he directed the Insured not to answer whole categories of questions, including regarding preexisting injuries/conditions, details regarding the severity of the subject accident, and other such information, all while conceding these questions were relevant, good questions all within the scope of the EUO. This was compounded by the Insured's failure to recall important details about not only his three prior unrelated accidents, but also regarding his alleged treatment at Plaintiff's clinic following the subject accident, which occurred nearly every day over a period of weeks. Defendant contends that all of this together just gave rise to more questions and provided essentially no clear answers. [DIN 44]. Likewise, the Insured failed to bring key documents to the EUO.

7. Defendant therefore contends the Insured failed to comply with the policy's EUO requirement and related requirements to provide information and documentation pertinent to the claim investigation. Defendant maintains this was a material, prejudicial breach of the policy and PIP statute, which bars this lawsuit and any further recovery on this PIP claim. [DIN 44].

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8. Defendant's motion provides the following exhibits in support of its request for summary judgment: **(A)** the subject policy issued by Defendant; **(B)** the adjuster's affidavit, which itself attached and verified a number of claim documents; **(C)** an attorney affidavit, which verified the EUO Notice(s); **(D)** the transcript of the Insured's EUO which was held July 15, 2024, a couple weeks before this lawsuit was filed on August 9, 2024. [DIN 44, at Exs. A-D].

9. The policy sets forth several terms and conditions, including the following:

INSURED'S DUTIES

2. Notice to Us of an Accident or Loss

The ***insured*** must give ***us*** or one of ***our*** agents notice of the accident or ***loss*** as soon as reasonably possible. The notice must give ***us***:

. . . .

c. the hour, date, place, and facts of the accident or ***loss***[.]

. . . .

4. Insured's Duty to Cooperate With Us

a. The ***insured*** must cooperate with ***us*** and, when asked, assist ***us*** in:

. . . .

(2) securing and giving evidence; and

(3) attending, and getting witnesses to attend, depositions, hearings, and trials.

. . . .

5. **Questioning Under Oath**

Under:

a. No-Fault Coverage, each ***insured*** making claim or seeking payment must, at ***our*** option:

(1) submit to an examination under oath;

(2) provide a statement under oath; or

(3) do both (1) and (2) above,

as often as ***we*** reasonably require. Such ***insured*** must answer questions under oath, asked by anyone ***we*** name, and sign copies of the answers. ***We*** may require each ***insured*** answering questions under oath to answer the questions with only that ***insured's*** legal representative, ***our*** representatives, any ***person*** or ***persons*** designated by ***us*** to record the questions and answers, and no other ***person*** present.

The scope of the questioning during the examination under oath is limited to relevant information that could reasonably be expected to lead to relevant information. Compliance with **Questioning Under Oath** is a condition precedent to receiving benefits.

. . . . 5

7. **Other Duties Under No-Fault Coverage . . . .**

An ***insured*** making claim under:

a. No-Fault Coverage, . . . must:

(1) notify us of the claim and give us all the details about the . . . injury, treatment, and other information that we may need as soon as reasonably possible after the injured insured is first examined or treated for the injury. . . .

. . . .

(3) provide written authorization for ***us*** to obtain:

(a) medical bills;

(b) medical records;

(c) wage, salary, and employment information;

and

(d) any other information ***we*** deem necessary to substantiate the claim.

. . . .

(4) allow ***us*** to inspect the vehicle that the ***insured occupied*** in the accident;

b. No-Fault Coverage or Medical Payments Coverage must, at ***our*** request, submit documentation from the appropriate healthcare provider described in 1.A. or 1.B. under the **Insuring Agreement** of this policy's No-Fault Coverage,. . . .

. . . .

[DIN.44, at Ex. A].

10. The policy's PIP provisions exclude coverage for any Insured who fails to comply with the EUO requirement, stating:

NO FAULT COVERAGE

. . . .

Exclusions

THERE IS NO COVERAGE FOR:

. . . .

3. ANY ***INSURED PERSON***:

. . . .

d. WHO REFUSES TO:

(1) SUBMIT TO, COMPLETE, OR FAILS TO APPEAR AT AN EXAMINATION UNDER OATH; . . . .

[DIN.44, at Ex. A]. 6

11. The fact that the Insured's compliance with post-loss duties, like those noted above, is a condition precedent to any lawsuit is underscored by the policy's no-action clause, which states: "**Legal Action Against Us**. . . . Legal action may not be brought against ***us*** until there has been full compliance with all the provisions of this policy. . . ." [DIN 44, at Ex. A].

12. The adjuster's affidavit verifies, *inter alia*, that Defendant requested the Insured's EUO during its claim investigation. Therein, the adjuster also explains why the information and EUO requested were needed to investigate this claim as follows:

> . . . . The reasons include but are not limited to the following examples, which illustrate both why the EUO was warranted and why State Farm's investigation of this PIP claim was prejudiced by the Insured's material breach of Policy conditions precedent, like the EUO requirement: **(a)** the traffic crash report indicates this was a minor collision that occurred on a rainy evening on the perimeter road at the Dolphin mall, when a Corvette rear-ended the SUV in which the Insured was riding . . . ; **(b)** no injuries were reported on scene and the responding officer described the vehicle damage as "minor"; **(c)** photos of the vehicles depicted little if any damage; **(d)** further investigation indicated the small dent near the SUV's rear bumper may have preexisted this accident; **(e)** once Plaintiff's treatment records were reviewed, it was observed that the Insured's signatures on the multiple records for different alleged dates of service looked identical; **(f)** Plaintiff's bills appeared to be for excessive treatment which appeared to be either totally or largely unnecessary and unreasonable for such a minor accident.
>
> [DIN 44, at Ex. B].

13. As noted above, the attorney affidavit included in the summary judgment exhibits verifies and attaches the two EUO Notice Letters, one setting the Insured's EUO and the other resetting it by agreement, to be held remotely via Zoom. [DIN 44, at Ex. C].

14. These EUO Notice Letters, in addition to providing the date/time of the EUO, informed the Insured that he was required by the policy to submit to an EUO upon request; the letters warned that if the Insured failed to cooperate, it would breach the policy and could result in the claim being denied. The letters also provided a list of documents the Insured was requested to produce at the EUO, including: **(A)** photographs depicting any vehicle damage from the accident; **(B)** vehicle title and registration; **(C)** a record of all medical treatment dates and times; **(D)** all treatment records for the alleged injuries from this accident; **(E)** all medical records for the past year; and **(F)** the like. [DIN.44, at Ex. C].

15. The Insured's pre-suit EUO was held on July 15, 2024. [DIN 44, at Exs. C-D].

16. The transcript of the EUO speaks for itself. This Court agrees with Defendant's characterization of the EUO. [DIN 44, at Ex. C &

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Ex. D pp.13-15, 20-23, 25-28, 35-37, 42-58, 63-68].

17. The Court has reviewed and considered the EUO in its entirety; the following excerpts are examples illustrating why the Court reaches this conclusion:

13· · · · Q· · Have you ever been in any other motor vehicle
14· ·accidents regardless of whether or not you were the
15· ·passenger, the driver or a pedestrian?
16· · · · A· · Yes.
17· · · · Q· · How many accidents and when were they?
18· · · · A· · Three accidents.

. . . .

23· · · · Q· · Would you say all three of them were less than
24· ·five years ago, less ten years ago?· How old are these
25· ·accidents?
·1· · · · A· · Five years.

. . . .

23· · · · Q· · Give me one moment.· If I give you some years
24· ·perhaps you'll be able to remember.
25· · · · · · ·So 2018, an accident occurred.· Do you
·1· ·remember anything about an accident that happened in
·2· ·2018?
3· · · · A· · No.
·4· · · · Q· · Do you remember that an accident that occurred
·5· ·in 2019?
·6· · · · A· · I don't remember the years.
·7· · · · Q· · Okay.· In the accident which took place in
·8· ·2018, whose car were you in when the accident occurred?
·9· · · · A· · I don't know.· I don't remember.
10· · · · Q· · And for the accident which took place in 2019,
11· ·do you remember which car you were in when the accident
12· ·occurred?
13· · · · A· · I don't either.
14· · · · Q· · An accident which occurred in 2020, do you
15· ·remember what car were you in when the accident
16· ·occurred?
17· · · · A· · No.
18· · · · Q· · Well, if you can't remember anything
19· ·whatsoever from any of those prior three accidents, we
20· ·can go ahead and move on.

. . . .

19· · · · Q· · Have you ever seen a chiropractor for any
20· ·reason prior to the [subject] accident which occurred in
21· ·February 2024?
22· · · · · · ·**MR. SUAREZ:· Don't answer that question**.
23· · · · Q· · Can you tell me what areas of your body was
24· ·treated by a chiropractor prior to the [subject] accident that
25· ·occurred in 2024?
1· · · · · · ·MR. SUAREZ:· Don't answer any questions
·2· · · · about any prior accidents.· That's it.
·3· · · · Q· · Prior to the 2024 accident, did you ever
·4· ·suffer from back pain?
·5· · · · · · ·**MR. SUAREZ:· Don't answer that question**.
·6· · · · Q· · Prior to the 2024 accident, did you ever
·7· ·suffer from shoulder pain?
·8· · · · · ·**MR. SUAREZ:· Don't answer that question.**
·9· · · · Q· · Prior to the 2024 accident, has anybody ever
10· ·told you that you had herniated discs?
11· · · · · ·**MR. SUAREZ:· Don't answer that question.**
12· · · · Q· · Did you have any substantial injuries or
13· ·illnesses growing up?
14· · · · · ·**MR. SUAREZ:· Don't answer that question.**
15· · · · Q· · Before the accident which occurred in 2024,
16· ·did you consider yourself healthy?
17· · · · · ·**MR. SUAREZ:· Don't answer that question.**
18· · · · **It's very broad and ambiguous.**
19· · · · Q· · Prior to the 2024 accident, did you exercise
20· ·frequently?
21· · · · · ·**MR. SUAREZ:· Don't answer that question.**
22· · · · Q· · Prior to the 2024 accident, did you ever break
23· ·any bones?
24· · · · · ·**MR. SUAREZ:· Don't answer that question.**
25· · · · Q· · Prior to the 2024 accident, did you ever need
·1· ·any stitches?
·2· · · · · ·**MR. SUAREZ:· Don't answer that question.**
·3· · · · Q· · Have you ever spent the night in a hospital
·4· ·prior to the 2024 accident?
·5· · · · · ·**MR. SUAREZ:· Don't answer that question.**
·6· · · · Q· · Have you ever had an MRI scan prior to the
·7· ·2024 accident?
·8· · · · · ·**MR. SUAREZ:· Don't answer that question.**
·9· · · · · ·MR. FREIRE:· We'll do a broad one so you
10· · · · can say don't answer at once.
11· · · · Q· · Have you ever had any operations,
12· ·hospitalizations, broken bones, x-rays or MRIs prior to
13· ·the 2024 accident?
14· · · · · ·MR. SUAREZ:· Don't answer the question.
15· · · · Q· · Do you remember what your last medical
16· ·treatment prior to the accident was?
17· · · · A· · Prior to this accident?
18· · · · Q· · Yes.
19· · · · · · ·**MR. SUAREZ:· Don't answer that question.**
20· · · · Q· · Now we're moving forward to the current
21· ·accident.· Give me one moment.
22· · · · · ·MR. FREIRE:· Mr. Suarez, I'm going to go
23· · · · ahead and send you an authorization for a
24· · · · release of information to be signed by
25· · · · Mr. Varona.· Since you've got him in the
·1· · · · office, I figure it will be a good opportunity.
·2· · · · · ·MR. SUAREZ:· Counsel, my position is that
·3· · · · I do not sign things that I cannot properly
·4· · · · review whether or not you're entitled to the
·5· · · · information.· So he will not be signing that
·6· · · · today.·. . .

. . . .

22· · · · Q· · Do you happen to remember—I don't need a
23· ·specific number, I'll take a ballpark—around how fast
24· ·you were driving just prior to the impact?
25· · · · · · ·**MR. SUAREZ:· Don't answer that question.**
·1· · · · Q· · Do you know how fast the other car was driving
·2· ·right before impact?
·3· · · · · ·**MR. SUAREZ:· Don't answer that question.**

. . . .

19· · · · Q· · . . . . Did you have your seat belt on at
20· ·the time of the accident?
21· · · · · ·**MR. SUAREZ:· Don't answer that question.**

. . . .

14· · · · Q· · Why did you go to Gina Medical Center and not
15· ·to a hospital or to an orthopedic doctor?
16· · · · · ·**MR. SUAREZ:· Don't answer that question.**
17· · · · **I guess the answer has more to do with a legal**
18· · · · **question than anything.**

. . . .

18· · · [Q]· . . . . Your primary care physician, Magaly Saoco, are
19· ·they aware that you were injured in an accident?
20· · · · A· · · No.· I don't remember what I told her, but
21· ·no, no.
22· · · · Q· · Is there any reason why you didn't tell her?
23· · · · A· · I am treated by her every three months.
24· · · · Q· · Have you been treated by her since the
25· ·accident which occurred in February?

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·1· · · · A· · I don't remember.
·2· · · · Q· · It's been five months since February, but I'll
·3· ·go ahead and put down what you don't remember.· No
·4· ·problem.
·5· · · · · ·Do you plan to advise your primary care doctor
·6· ·that you were in an accident and you were injured as a
·7· ·result of that accident?
·8· · · · · ·**MR. SUAREZ:· Don't answer that question.**
·9· · · · Q· · Why did you not go to the primary care
10· ·doctor for treatment following the accident?
11· · · · · ·**MR. SUAREZ:· Don't answer that question.**
12· · · · Q· · Did you call your primary care doctor for a
13· ·referral as a result?
14· · · · · ·**MR. SUAREZ:· Don't answer that question.**
. . . .
25· · · · Q· · When you would sign for therapy, did you just
·1· ·sign once or you signed every time you received therapy?
·2· · · · A· · When I received therapy.
·3· · · · Q· · Thank you.· Could you please show me an
·4· ·example of your signature?· Could you grab a piece of
·5· ·paper and scribble your signature on it three times?
·6· · · · · ·**MR. SUAREZ:· We're not doing that now,**
·7· · · · **counsel.**
·8· · · · · ·MR. FREIRE:· Is there any reason why?
·9· · · · · ·MR. SUAREZ:· Yes.· One, there's a
10· · · · electronic signature you're going to be
11· · · · comparing it to, which is not fair.
12· · · · · ·Number two, I don't think you'll be entitled
13· · · · to a signature.· None of us are experts here at
14· · · · this point.·. . . .
. . . .
2· · · · A· · I saw the doctor on the phone through a
·3· ·camera.
·4· · · · Q· · Around how long did you spent on that video
·5· ·call with the doctor?
·6· · · · A· · I wouldn't know what to tell you specifically.
·7· ·I didn't look into the time. . . .
. . . .
12· · · · Q· · How did you know that she was a doctor?· Did
13· ·she introduce herself as a doctor?· Was she wearing a
14· ·white coat in the video?
15· · · · A· · Yes.
. . . .
17· · · · A· · She didn't see me physically the first time.
18· ·The first time she saw me through a video call but not
19· ·physically.
20· · · · Q· · I understand that, but were your vitals taken
21· ·as you came in?· It doesn't always have to be by a
22· ·doctor.
23· · · · A· · I don't remember.
. . . .
11· · · · · ·MR. SUAREZ:· I'm quiet here sitting and
12· · · · I'm listening to your questions.· You're
13· · · · entitled to those questions.· Those are good
14· · · · questions, but do you really need to know
15· · · · whether the doctor was wearing a white robe or
16· · · · not?· Really?· I mean, come on.
17· · · · · · ·MR. FREIRE:· If you ask me, I would say
18· · · · maybe not.· If you ask my client, they may say
19· · · · yes.
20· · · · · · ·MR. SUAREZ:· You're entitled to it legally
21· · · · because the policy says you can ask anything
22· · · · reasonably calculated or can lead to discovery,
23· · · · but Jesus Christ, guys, come on.
. . . .
11· · · · Q· · How long did it take for the x-rays to be
12· ·performed?· How long were you at Mazel Medical Center on
13· ·the 20th of February 2024?
14· · · · · ·How much time did you spent at Mazel Medical
15· ·center on that day?
16· · · · A· · I didn't measure the time.
. . . .
23· · · · · · ·MR. SUAREZ:· Counsel, before we go on, I'm
24· · · · interjecting now because I have a feeling that
25· · · · at this rate you're not going to be done before
·1· · · · 5:00.
·2· · · · · · ·I will not reschedule this So we have to
·3· · · · move on until this is done.· My client took a day
·4· · · · off from work to do this.· So this is going to be
·5· · · · finished today . . . .
. . . .
17· · · · · · ·MR. FREIRE:· That's fine that you won't
18· · · · agree to reschedule, but if we have to
19· · · · reschedule, that's going to be what it is.
20· · · · · · ·MR. SUAREZ:· No. It's not going to
21· · · · happen·. . .
. . . .
10· · · · Q· · Has there been any improvements made since you
11· ·have received therapy?
12· · · · · ·**MR. SUAREZ:· Don't answer that question.**
13· · · · · · ·THE INTERPRETER:· I won't ask since he
14· · · · won't answer it.
15· · · · · · ·MR. FREIRE:· No problem.
16· · · · Q· · Can you remember when your neck began to
17· ·improve?
18· · · · · ·**MR. SUAREZ:· Don't answer.**
19· · · · · · ·MR. FREIRE:· We'll go ahead and do this in
20· · · · one go, because I think that's going to be the
21· · · · answer for most of it.
22· · · · Q· · Can you remember when your neck, back,
23· ·shoulder, right shoulder and right knee began to
24· ·improve?
25· · · · · · ·MR. SUAREZ:· Don't answer any of those
·1· · · · questions.
. . . .
19· · · · Q· · Was your car fixed?
20· · · · · ·**MR. SUAREZ:· Don't answer that question.**
21· · · · Q· · Where did you have your car fixed?
22· · · · · ·**MR. SUAREZ:· Don't answer that question.**
23· · · · Q· · How much did it cost to have your car fixed?
24· · · · · ·**MR. SUAREZ:· Don't answer that question.**
25· · · · Q· · Did you make a claim for the repair of your
·1· ·car against the other insurance company?
·2· · · · · ·**MR. SUAREZ:· Don't answer that question.**
·3· · · · Q· · Do you have photos of the damage of the
·4· ·accident?
·5· · · · · ·**MR. SUAREZ:· Don't answer that question.**
·6· · · · Q· · Did you present photos of the accident to the
·7· ·opposing insurance company?
·8· · · · · ·**MR. SUAREZ:· Don't answer that question.**
·9· · · · Q· · Did the opposing insurance company deny paying
10· ·the damage of that accident?
11· · · · · ·**MR. SUAREZ:· Do not answer that question.**
12· · · · Q· · Give me one moment.· Let me flip through some
13· ·of this
14· · · · · ·Since the accident, have you had any claims or
15· ·new injuries?
16· · · · · ·**MR. SUAREZ:· Don't answer that question.**
17· · · · **It was already answered.**
18· · · · · · ·MR. FREIRE:· New accidents.

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19· · · · · · ·MR. SUAREZ:· You asked new accidents and
20· · · · he said no.
21· · · · · · ·MR. FREIRE:· Yes.· I'm now asking claims
22· · · · or injuries.· That's different than accidents,
23· · · · but no problem.· We'll move along.

. . . .

14· · · [Q]· · ·When did you buy the vehicle which you were
15· ·driving at this accident?
16· · · · · ·**MR. SUAREZ:· Don't answer that question.**
17· · · · Q· · Were you aware that the vehicle was salvaged
18· ·when you bought it?
19· · · · · ·**MR. SUAREZ:· Don't answer that question.**
20· · · · Q· · Did you go to work on any of the days where
21· ·you received treatment?
22· · · · A· · Yes.· After 15 or 20 days I went to work at
23· ·Amazon.
24· · · · Q· · On any of the 16 days where you received
25· ·treatment, did you work the same day you received
·1· ·treatment?
·2· · · · · · ·MR. SUAREZ:· What 16 days?
·3· · · · · · ·MR. FREIRE:· There are 16 dates of service
·4· · · · · where he received treatment from Gina Medical
·5· · · · Center, where he received therapy.
·6· · · · · · ·MR. SUAREZ:· And he already said that he
·7· · · · went back to work on some of those days.
·8· · · · That's the answer already.
·9· · · · Q· · The question was which days and how many out
10· ·of the 16 days?
11· · · · · · ·MR. SUAREZ:· Okay.
12· · · · A· · I don't remember. . . .

[[DIN 44, at Ex. D pp.13-15, 20-23, 25-26, 28, 35-37, 41-42, 45-48, 52-53, 63-68 (bold added)].

18. Plaintiff did not file a response to Defendant's summary judgment motion within 40 days as required by Rule 1.510, which would have been Monday, September 8, 2025. Nevertheless, this Court has reviewed and considered Plaintiff's arguments in its untimely response filed December 9, 2025 [DIN 59], and at the hearing held December 16, 2025 [DIN 67].

19. In a nutshell, Plaintiff contends the Insured complied with the EUO requirement simply by showing up to the EUO and answering some questions through an interpreter. Plaintiff points to the length of the EUO, 2 hours and 44 minutes. Plaintiff also claims the objections its counsel posed at the Insured's EUO were proper relevance objections and that a factfinder, not the Court, must decide whether the questions were relevant. Plaintiff also argues that if Defendant disagreed with the objections, it could have re-set another EUO and/or could have moved to compel, despite the pre-suit posture. [DIN 59; see also DIN 44, at Ex. D].

20. This Court disagrees with Plaintiff on all points and instead holds that Defendant is entitled to final summary judgment as a matter of law.

ANALYSIS

Defendant has met its initial burden on summary judgment to establish that the Insured materially breached the policy by failing to substantially comply with the EUO requirement and related post-loss duties. Plaintiff has failed to present any evidence that might demonstrate a genuine issue for trial on the breach issues. Plaintiff has also failed to rebut the presumption of prejudice to Defendant.

The subject policy expressly requires the Insured to "submit to" and "complete" an EUO upon request, in addition to other post-loss duties like providing requested documentation, information, and cooperating in the claim investigation. Compliance is a condition precedent to receiving PIP benefits under the policy. *See, e.g., Goldman v. State Farm Fire Gen. Ins. Co.,* 660 So. 2d 300, 301 (Fla. 4th DCA 1995) [20 Fla. L. Weekly D1844a]; *Stringer v. Fireman's Fund Ins. Co.,* 622 So. 2d 145, 146 (Fla. 3d DCA 1993). In fact, the PIP statute makes compliance with the EUO and other such policy terms express statutory conditions precedent. *See Miracle Health Services, Inc. v. Progressive Select Ins. Co.,* 326 So. 3d 109, 112 (Fla. 3d DCA 2021) [46 Fla. L. Weekly D1608a]. Section 627.736 states in relevant part:

> **(6) Discovery of facts about an injured person; disputes.—**
>
> * * *
>
> (g) An insured seeking benefits under ss. 627.730-627.7405, including an omnibus insured, <u>must comply with the terms of the policy, which include, but are not limited to, submitting to an examination under oath</u>. The scope of questioning during the examination under oath is limited to <u>relevant information or information that could reasonably be expected to lead to relevant information</u>. Compliance with this paragraph is a condition precedent to receiving benefits. . . .

§627.736(6)(g), Fla. Stat. (underscore added).

An insured's failure to substantially comply with the EUO requirement and/or other such post-loss duties constitutes a material breach of the policy; the breach, in turn, gives rise to a presumption of prejudice which the Plaintiff has the burden to rebut, or else coverage is barred. *See Miracle Health Services, Inc.,* 326 So. 3d at 111-15; *Goldman,* 660 So. 2d at 301-06; *Stringer,* 622 So. 2d at 146; *see also Infinity Auto Ins. Co. v. Miami Open MRI, LLC,* 361 So. 3d 954, 955-57 (Fla. 3d DCA 2023) [48 Fla. L. Weekly D1130b]; *Nunez v. Universal Prop. & Cas. Ins. Co.,* 325 So. 3d 267, 268-75 (Fla. 3d DCA 2021) [46 Fla. L. Weekly D1747b]; *People's Tr. Ins. Co. v. Amaro,* 319 So. 3d 747, 752-53 (Fla. 3d DCA 2021) [46 Fla. L. Weekly D1025a]; *Soronson v. State Farm Florida Ins. Co.,* 96 So. 3d 949, 953 (Fla. 4th DCA 2012) [37 Fla. L. Weekly D1777a]; *Starling v. Allstate Floridian Ins. Co.,* 956 So. 2d 511, 513-14 (Fla. 5th DCA 2007) [32 Fla. L. Weekly D1100a].

Based on the undisputed facts, such as those discussed above, this Court finds as a matter of law that the Insured materially breached the policy and §627.736(6)(g), by failing to "submit to" or "complete" an EUO, plus his failure to provide requested information and documentation at the EUO.

Plaintiff's main contention is that the Insured substantially complied with these conditions precedent merely by attending the pre-suit EUO. This Court disagrees. As the Sixth District has recognized, an insured's failure to comply with the EUO requirement may fall into one of two categories: **(1)** failure to appear, or **(2)** failure to "submit to" an EUO. *See Advanced Fla. Med. Group v. Progressive Am. Ins. Co.,* 364 So. 3d 1131, 1131-34 & n.3 (Fla. 6th DCA 2023) [48 Fla. L. Weekly D1078b]. So, appearing at an EUO is one thing, but submitting to or completing an EUO is a different matter altogether. *See id.* at 1132-34 & n.3.

Plaintiff's focus on the Insured's appearance at the EUO misses the point. What matters is whether the Insured's failure or refusal to answer questions and provide the information and documentation requested at the EUO was a material breach or failure to substantially comply. It is true that the Insured answered some questions at the EUO. But the whole EUO must be considered, and examination of the whole EUO transcript demonstrates the Insured, based on Plaintiff's counsel's instructions, refused to answer several categories of questions Defendant was entitled to ask. Under these egregious facts, concluding there is a genuine issue of material fact or believing a reasonable juror could find in Plaintiff's favor would be tantamount to concluding the Defendant's statutory and contractual rights to an EUO and claims investigation are illusory. Defendant's statutory and contractual rights are not illusory.

Ultimately, this Court concludes that Defendant properly pled and

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proved that the Insured failed to "submit to" or "complete" an EUO. Attending the EUO was not enough. This Court agrees with Defendant's characterization of the EUO. The Insured's counsel, who is also Plaintiff's counsel, objected to multiple areas of inquiry relevant to the claim investigation, including preexisting conditions and details relevant to whether this was a minor accident. This was compounded by the Insured's failure to recall much of anything regarding his three prior accidents (in 2018, 2019, and 2020 respectively), by his vague answers regarding his treatment following the subject accident in 2024, and by his failure to produce the requested documents.

In sum, the Insured failed to produce requested documents and failed to answer numerous questions during the EUO—either because he conveniently did not recall important facts or because his attorney instructed him not to answer. As a result, the Insured failed or refused to answer whole categories of pertinent questions, including regarding prior accidents, preexisting conditions, and the severity of the subject accident. Under any reasonable view, the Insured did not "submit to" or "complete" an EUO, as required by the policy and PIP statute. Plaintiff has not and cannot show otherwise.

Although Plaintiff points to the length of the EUO (2 hours, 44 minutes), duration does not equal compliance. Plaintiff's argument also ignores the fact that the Insured testified through an interpreter, not to mention the myriad objections. The Insured cannot sit for hours while his counsel vetoes material inquiry, and then claim he complied.

And Plaintiff's claims that the objections posed at the EUO were proper (*i.e.,* they would be sustained in discovery or at an evidentiary hearing) or that relevance is a fact issue are wrong. The statutory scope of the EUO is "relevant information or information that could reasonably be expected to lead to relevant information." This is like the pre-amendment broad scope of post-suit discovery. Like discovery disputes and relevance objections at trial, the Court, not a factfinder, decides relevance as a matter of law. And the questions Plaintiff's counsel instructed the Insured not to answer were relevant or could lead to relevant information—they were related to the accident, the claim, the vehicle, or the Insured's injuries, all of which could lead to information about whether the services were related to the accident, necessary, or reasonable, or coverage under the policy.

Importantly, no relevance objections were specified. Not one time. Counsel even conceded relevance at one point while complaining the EUO was taking too long, stating, for example: "You're entitled to those questions. Those are good questions. . . . You're entitled to it legally because the policy says you can ask anything reasonably calculated or can lead to discovery[.]" [DIN 44, at Ex. D p.48]. So, even if the questions were outside the EUO's permissible scope (they were not), Plaintiff's counsel waived any possible relevance objections during the EUO.

This Court also rejects Plaintiff's arguments that Defendant could have re-set another EUO and/or could have moved to compel. None of these suggested options are required by statute or the policy. And at the EUO, the Insured's counsel made clear he would not agree to another EUO, stating: "**I will not reschedule this**[.]" [DIN 44, at Ex. D pp. 52-53 (emphasis added)]. It is incongruous for the same attorney to now claim Defendant could have set another EUO; and a motion to compel was not a realistic option given the pre-suit posture, plus suit was filed shortly after the EUO. In any event, proposed compliance after suit does not cure the failure to comply with conditions precedent. *See, e.g., Goldman,* 660 So. 2d at 301-05 (holding that insured's failure to attend pre-suit EUO was material prejudicial breach which could not be cured post-suit, and recognizing that "an insured has a duty to volunteer information related to the claim during an [EUO] in accordance with the policy[.]").

Based on the foregoing, the Court holds there is no genuine dispute of material fact that the Insured materially breached the policy by failing to substantially comply with the EUO requirement and related post-loss duties, as per the policy and §627.736(6)(g). Plaintiff has failed to show otherwise and has also failed to rebut the presumption of prejudice to Defendant.

It is therefore **ORDERED AND ADJUDGED**:

Defendant's Motion for Final Summary Judgment, filed July 29, 2025 [DIN 44], is hereby GRANTED for the reasons stated above and those stated on the record at the hearing.

Therefore, final summary judgment is hereby entered in favor of Defendant and against Plaintiff in this action. Defendant shall go hence without day.

This Court reserves jurisdiction over any timely motions seeking attorney's fees and/or costs.

*   *   *

Insurance—Personal injury protection—Venue—Motion to transfer venue from Miami-Dade County to Palm Beach County granted—It is undisputed that medical provider's principal place of business is Palm Beach County and it maintains no offices or officers in Miami-Dade County, accident occurred and all treatment was rendered in Palm Beach County, payment was due in Palm Beach County in accordance with Medicare fee schedule for that region, and claimant and all witnesses reside in Palm Beach County

DR. CHRIS THOMPSON, DC, PA, Plaintiff, v. MGA INSURANCE COMPANY, INC., Defendant. County Court, 11th Judicial Circuit in and for Miami-Dade County. Case No. 2025-126901-SP-23. Section MB01. February 20, 2026. Stephanie Silver, Judge. Counsel: Cursten Taylor, Fort Lauderdale, for Plaintiff. Scott E. Danner, Kirwan, Danner & Alvarez P.A., Ft. Lauderdale, for Defendant.

ORDER ON DEFENDANT'S MOTION TO TRANSFER VENUE AND/OR CHANGE VENUE FOR FORUM NON-CONVENIENS

THIS CAUSE having come on to be heard on Defendant's Motion to Transfer Venue to Palm Beach County (filed under certificate of service October 21, 2025), the Court being otherwise fully advised in the premises at a hearing on February 19, 2026, it is hereby **ORDERED AND ADJUDGED:**

1. Defendant's Motion to Transfer Venue to Palm Beach County is **GRANTED**.

2. It is Defendant's position that venue is appropriate in Plam Beach County under Fla. Stat. § 47.122. In support of its position, Defendant relies on the Affidavit of Defendant's Representative, Eveth Torres (filed on November 10, 2025).

3. The Defendant's affidavit asserted that the accident occurred in Pahokee, Palm Beach County, Florida, the treatment occurred in Wellington, Plam Beach County, Florida and the claimant and all witnesses were residents of Palm Beach County, Florida.

1. There is no dispute that Plaintiff's principal place of business is in Palm Beach County, that the services were rendered in Palm Beach County, payment was due in Palm Beach County and that the Plaintiff maintains no office(s) in Miami-Dade County, none of Plaintiff's officers are located in Miami-Dade County, none of the treatment rendered to the insured/patient took place in Miami-Dade County.

5. The Affidavit relied upon by the Defendant included the police report, applicable medical bills and explanations of benefits.

6. The insurer's motion relied upon *section 47.122, Florida Statutes (2025)*: "For the convenience of the parties or witnesses or in the interest of justice, any court of record may transfer any civil action to any other court of record in which it might have been brought." The insurer's motion outlined why Miami-Dade County was an inconvenient venue and Palm Beach County was the proper venue.

7. The affidavit also established that the interest of justice favor

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Palm Beach County because the payment that was made was based on the Medicare Part B Participating Fee schedule from region 03, which applied to the bills from Palm Beach County as opposed to region 99 where the lawsuit was filed.

8. When a party establishes that venue is improper in the county in which the suit was filed by way of an affidavit, the burden shifts to the opposing party to rebut the affidavit with sworn evidence. *Progressive Select Ins. Co. v. Walden*, 417 So. 3d 344 (Fla. 4th DCA 2025) [50 Fla. L. Weekly D1554a] *Gino Vitiello, M.D., P.A., v. Genovese Joblove & Battista, P.A.,* 123 So. 3d 1185 (Fla. 4th DCA 2013) [38 Fla. L. Weekly D2206b]. See also *E.I. Dupont De Nemours & Co. v. Fuzzell,* 681 So. 2d 1195 (Fla. 2d DCA 1996) [21 Fla. L. Weekly D2303a].

9. The Plaintiff did not file a response in opposition to Defendant's Motion and/or Defendant's Affidavit.

10. Moreover, remote testimony via video platforms like Zoom is not a means to overcome an otherwise meritorious venue transfer motion supported by the affidavit of the Defendant. See *Progressive Select Ins. Co. v. Walden,* 417 So. 3d 344 (Fla. 4th DCA 2025) [50 Fla. L. Weekly D1554a]

11. Accordingly, since Defendant established venue was improper in Miami-Dade County by way of an affidavit, the burden now shifted to Plaintiff to rebut the affidavit with sworn evidence. Because Plaintiff filed nothing in opposition [to either the Motion or Affidavit], Plaintiff has not met its burden.

12. Therefore, transfer to the County Court of the Fifteenth Judicial Circuit in and for Palm Beach County is appropriate.

13. Furthermore, Defendant has agreed to pay the transfer fee. If the Defendant does not pay the fee within 45 days, the Defendant understands that this Order will be vacated and the case will proceed in Miami-Dade County.

14. The Clerk is hereby directed to transfer this case to Palm Beach County.

* * *

Insurance—Personal injury protection—Coverage—Reimbursement rate—Unattended electrical stimulation—Where CPT billing code for unattended electrical stimulation is no longer recognized by Medicare Part B, but the service represented in that billing code remains covered by Medicare Part B under different code, the service is reimbursable under the code recognized by Medicare Part B for purposes of section 627.736(5)(a)1

NETWORK CHIROPRACTIC CONSULTANTS, INC., a/a/o Alexandre Analange, Plaintiff, v. PROGRESSIVE AMERICAN INSURANCE COMPANY, Defendant. County Court, 11th Judicial Circuit in and for Miami-Dade County. Case No. 2023-195159-SP-26. Section ND01. November 21, 2025. Christopher Benjamin, Judge. Counsel: Thayer A. Musa, TAM LAW, LLC, Miami, for Plaintiff. Lillian J. Sanchez, Progressive House Counsel, Riverview, for Defendant.

AMENDED FINAL SUMMARY JUDGMENT

THIS CAUSE, having come before the Court upon the Court's sua sponte review of the original final summary judgment and finding a scrivener's error in the stated applicable statute. The Court, in correcting such error, finds there is no genuine dispute as to any material fact, and the question of law regarding the maximum allowable reimbursement for the medical services at issue is in favor of the Defendant. The Defendant is entitled to judgment as a matter of law. Accordingly, the Court finds as follows:

I. *Judicial Notice Granted*

The Defendant's Requests for compulsory judicial notice are granted pursuant to FL. Stat. § 90.202 (1)and § 90.203, the Court takes compulsory judicial notes of the following federal regulations and documents, which constitute the basis for determining the statutory schedule of maximum charges:

1. The Medicare Part B Fee Schedule and its accompanying data (Relative Value Units, Geographic Practice Cost Indices, and Conversion Factors) for the applicable dates of service.
2. The Centers for Medicare & Medicaid Services (CMS) Program Transmittal AB-03-093 and the corresponding Federal Register documents, which clarify the coding and reimbursement policies for electrical stimulation.

Conclusions of Law and Statutory Compliance

This action is governed by the Florida Motor Vehicle No-Fault Law, FL Stat. § 627.736. The Defendant, having provided proper notice to its insured, elected to limit reimbursement pursuant to FL. Stat. § 627.736(5)(a)1, which restricts payment for "all other medical services, supplies, and care" to "200 percent of the allowable amount under the Medicare Part B fee schedule for the year in which the services were rendered."

Focus on Service, Not Code: The service at issue is unattended electrical stimulation. The Plaintiff billed this service using CPT code 97014. The Defendant determined the allowable amount by referencing HCPCS code G0283, which is the code mandated by Medicare/CMS, as per the judicially noticed Transmittal AB-03-093, for this specific service. The consensus is that when a service (such as unattended electrical stimulation) is described by two codes [CPT 97014 and HCPCS G0283], and Medicare recognizes only one, the Court must use the recognized code (G0283) for the PIP fee schedule calculation. The legal focus is on the service rendered, not the specific code billed. Since the service of unattended electrical stimulation has a specific, if unbundled, value under the Medicare-recognized code G0283, that value dictates the allowable amount for the PIP schedule.

Legal Justification for Code Substitution: The Defendant contends that pursuant to Transmittal AB-03-093, the compensable CPT code 97014 was substituted for HCPCS code G0283. This shows that there were not two compensable codes [CPT code 97014 and HCPCS code G0283]; instead, there was an actual substitution of codes for the undisputed service of "unattended electric stimulation." The insurer may "cross-walk" an invalid or superseded CPT code to the appropriate, Medicare-recognized HCPCS code to correctly calculate the statutory maximum. See *Allstate Fire & Casualty Insurance Company v. Perez ex rel.*, 111 So.3d 960 (Fla. 2d DCA 2013) [38 Fla. L. Weekly D915a].

Allowable Amount Determination: Based on the judicially noticed Medicare Part B Fee Schedule and CMS guidance, CPT code 97014 is not a recognized or reimbursable code under Medicare. The appropriate HCPCS code for unattended electrical stimulation is G0283.

Proper Payment: Because the maximum allowable charge is legally determined by FL. Stat. sec. 627.736(5)(a)1 to be "200% of Medicare allowable amount for HCPCS G0283, the Defendant's payment was compliant with the statute and the controlling case law. See *Sunrise Chiropractic and Rehabilitation Center, Inc. v. Security National Insurance Company*, 321 So. 3d 786 (Fla. 4th DCA 2021) [46 Fla. L. Weekly D1150a]; *Allstate Indemnity Company v. Gady Abramson, D.C., P.A.,* 403 So. 3d 1021 (Fla. 3d DCA 2024) [49 Fla. L. Weekly D2437a]. The Plaintiff's argument relying on a non-zero calculation for the non-reimbursable CPT 97014 is legally unavailing because there were not two separate codes for the same service; instead, CPT code 97014 was intentionally replaced by HCPCS code G0283 for the service of unattended electric stimulation. It is therefore,

ORDERED AND ADJUDGED that the Defendant, Progressive American Insurance Company's various requests for compulsory judicial notice of the Medicare Part B Fee Schedule and CMS regulatory guidance, including Transmittal AB-03-093, are granted,

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and the Defendant's Motion for Summary Judgment/Disposition is GRANTED. Final Summary Judgment is entered in favor of the Defendant, Progressive American Insurance Company, and against the Plaintiff, Network Chiropractic Consultants, Inc. a/a/o Alexandre Analange.

The Court reserves jurisdiction to determine entitlement and the amount of attorney's fees and costs, if any.

* * *

Landlord-tenant—Public housing—Eviction—Non-renewal of lease—Tenant's motion for summary judgment is denied where there exist genuine issues of material fact as to whether tenant violated terms of lease and whether such violations constituted just cause for non-renewal of lease—Landlord did not waive right to evict by failing to file eviction action within 45 days after having knowledge of noncompliance with lease where eviction was not a mid-term lease termination, but an action to evict after natural expiration of lease—Landlord's acceptance of subsidy in form of section 26 tax break, rather than section 8 subsidy, requires only that landlord show good cause to terminate tenancy

WEST BRICKELL VIEW, LTD., Plaintiff, v. MARITZA GARRIDO, Defendant. County Court, 11th Judicial Circuit in and for Miami-Dade County. Case No. 2025-062512-CC-05. Section CC08. February 25, 2026. Maria D. Ortiz, Judge. Counsel: Lowenhaupt, Sawyers & Spinale, Miami, for Plaintiff. Legal Services of Greater Miami, Miami, for Defendant.

ORDER DENYING DEFENDANT'S MOTION FOR SUMMARY JUDGMENT

THIS CAUSE came before the Court upon Defendant's Motion for Summary Judgment (docket entry 65). Plaintiff opposed Defendant's Motion (docket entry 68). A zoom hearing was scheduled and noticed for February 9, 2026, at 1:00 PM at which time the Court heard the parties' arguments.

The Court, after reviewing the case and the parties' filings, and after hearing the parties' arguments, and being fully advised in the facts and the law, hereby

ORDERS AND ADJUDGES:

1. Defendant's Motion for Summary Judgment is **DENIED.**

LEGAL STANDARD:

The test for the existence of genuine issue of material fact is whether "the evidence is such that a reasonable jury could return a verdict for the nonmoving party" and "whether the evidence presents a sufficient disagreement to require submission to a jury." *See In re Amends. to Fla. R. Civ. P. 1.510*, 317 So. 3d 72, 74 (Fla. 2021) [46 Fla. L. Weekly S95a] (quoting *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 251-52, 106 S.Ct. 2505, 91 L.Ed.2d 202 (1986)). Under this standard, "[t]he substantive evidentiary burden of proof that the respective parties must meet at trial is the only touchstone that accurately measures whether a genuine issue of material fact exists to be tried." *Id.* (citations omitted). *See also Benitez v. Lawson Indus., Inc.*, 367 So. 3d 600, 603 (Fla. 3d DCA 2023) [48 Fla. L. Weekly D1399a].

Because a Motion for Summary Judgment tests the sufficiency of the evidence and inferences in the light most favorable to the nonmoving party, these motions should be denied if the pleadings present the Court with any disputes regarding the material facts of the case. Material facts in dispute must be preserved and presented for determination at the trial stage, not pre-trial. *See Gonzalez v. Citizens Prop. Ins. Corp.*, 273 So. 3d 1031 (Fla. 3d DCA 2019) [44 Fla. L. Weekly D686a]. To fulfill the movant's burden in a motion for Summary Judgment, the movant must offer sufficient admissible evidence to support the claim of the non-existence of a genuine issue; if the movant fails to do this, the motion is lost. *Id.* "If the evidence [presented by the nonmovant] is merely colorable . . . , or is not significantly probative . . . , summary judgment may be granted." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. at 149. (citation omitted.)

Analysis:

Here, the parties disagree whether § 83.56(5)(c) should apply to the case at hand. Defendant claims that the section applies and that the Landlord has waived the right to evict/not-renew the Tenant after failing to file the instant case for more than 84 days after the Notice of Non-Renewal. The Plaintiff deny the allegation and claims that Section 83.56's forty-five days waiver "does not apply, as Fla. Stat. 83.56 only applies to mid-term lease terminations. Plaintiff further claims that "This is an eviction action under Fla. Stat. 83.575, after the natural expiration of the lease[.]"

Generally, private businesses have the freedom to choose who they deal with, guided by the "business judgment rule." The business judgment rule presumes the business acts in good faith and makes its decisions on an informed basis, and in the company's best interests.

Here, the Plaintiff alleges that Defendant has engaged in "a pattern of behavior" contrary to the terms of the parties' lease agreement. Plaintiff claims that the alleged "pattern" is demonstrated by unauthorized boarders in the Defendant's unit, failure to maintain the unit in good condition, parking violations, and confrontations with the property management. Defendant disputes that the violations even occurred, but contends that ", even if the allegations are true, the violations stopped at a certain point[.]" Additionally, Defendant claims that "Plaintiff has waived its ability to pursue this action because it did not institute an action within 45 days of having knowledge of the alleged non-compliance."

The forty-five days waiver can be found in Section 83.56(5)(c) which provides that a "waiver will occur if an action has not been instituted within 45 days after the landlord obtains actual knowledge of the noncompliance." Plaintiff points out that the Defendant filed the instant action 84 days after having notice of the alleged non-compliance. However, Section 83.56(5)(c) is not applicable to the case at hand, because the section deals with termination of leases rather than non-renewals. The Court finds that the non-renewals are governed by Section 83.575 F.S. which provides for

> **Termination of tenancy with specific duration.**
>
> (1)A rental agreement with a specific duration may contain a provision requiring the tenant to notify the landlord within a specified period before vacating the premises at the end of the rental agreement, if such provision also requires the landlord to notify the tenant in a manner prescribed by s. 83.56(4) within such notice period if the rental agreement will not be renewed. A rental agreement may not require less than 30 days' notice or more than 60 days' notice from either the tenant or the landlord.

The plain language of that section does not provide for a waiver of the Landlord's right not to renew Tenant's lease. The contrary would require that the legislature to have expressly established such waiver, similarly to Section 83.56(5)(c), and legislature has not done so. Thus, no implied waiver of the right not to renew is established here.

Additionally, Defendant points out that the lease agreement concerned the lease of a subsidized housing unit as defined by Section 83.56(5)(c). Regardless of this fact, the situation at hand does not change because, as explained above, this section is not applicable to non-renewals for cause. Moreover, a waiver cannot be found due to Plaintiff acceptance of subsidies. As Plaintiff properly pointed out, the subsidized housing here is not under Section 8 of the 1937 Act (42 U.S.C. 1437(f)) but is under Section 26 U.S.C. §42 which expressly provides that subsidized tenancy can be terminated for a "good cause." Section 26, unlike Section 8, provides subsidies for the Landlords in the form of tax break, and not Section 8 vouchers. As such, the Court finds that the Landlord has not accepted additional subsidies for the Defendant's unit because the Landlord would still

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qualify for the Section 26 tax break even if the unit was rented to a different tenant.

The case at hand most closely resembles the case of *Cimarron Village v. Washington*, 659 N.W. 2d 811 (Minn. App., 2023). (WL 1907972). In *Cimarron Village* the court found that "as a recipient of tax credits under 26 U.S.C. § 42 (2002), Cimarron Village need only show "good cause" and not material noncompliance before terminating appellants' tenancy." Although a Minnesota case, *Cimarron* has been repeatedly adhered to in Florida courts—*See Green Gables Apartments, Ltd. v. Williams*, 11 Fla. L. Weekly Supp. 1070a (Fla. Marion Cty. Ct. 2004) and *TWC Twenty-Nine, Ltd. v. Brothers*, 13 Fla. L. Weekly Supp. 715c (Fla. Pinellas Cty. Ct. 2006).

Living in a subsidized housing is a benefit that comes with specific conditions and requirements. Here, a genuine issue exists as to whether the Defendant has violated the terms of her lease or not, and whether such violations constitute a good cause for the non-renewal of her lease. The question presents a genuine issue of facts that can be decided only by a jury, and summary judgment is thus inappropriate.

CONCLUSION:

Hence, the Court **DENIES** Defendant's Motion for Summary Judgment, because a genuine issue of material facts exists which requires that the case be subject to a jury trial.

* * *

Contracts—Warranties—Motor vehicles—Affirmative defenses to action for breach of vehicle warranty are stricken for lack of factual support or lack of specificity

MICHELLE PESTANA, Plaintiff, v. TOYOTA MOTOR SALES U.S.A., INC., Defendant. County Court, 11th Judicial Circuit in and for Miami-Dade County. Case No. 2025-131532-CC-23 . Section CL02. March 11, 2026. Kevin Hellmann, Judge. Counsel: Joshua Feygin, Lemonaid Firm, PLLC, Hollywood, for Plaintiff. Jens C. Ruiz, Rumberger, Kirk & Caldwell, P.A., Orlando, for Defendant.

PROPOSED ORDER GRANTING PLAINTIFF'S MOTION TO STRIKE AFFIRMATIVE DEFENSES AND REPLY IN AVOIDANCE

THIS CAUSE came before the Court on Plaintiff's Motion to Strike Defendant's Affirmative Defenses and Reply in Avoidance pursuant to Fla. R. Civ. P. 1.140(f). A hearing was held on March 6, 2026, at which Plaintiff was represented by Maxwell Armitage, Esq., and Defendant was represented by Brent Hartman, Esq.

The Court notes that affirmative defenses are governed by Fla. R. Civ. P. 1.110(d). As amended, Rule 1.110(d) continues to require that affirmative defenses be stated "in short and plain terms" and be supported by the ultimate facts that, if proven, would establish the defense. Where a defense is potentially curable through the addition of supporting facts, the proper remedy is to strike without prejudice and allow amendment pursuant to Fla. R. Civ. P. 1.190(a) so that a party may replead with factual specificity.

1. Plaintiff's Motion to Strike Defendant's Affirmative Defenses is **GRANTED**.

2. The following defenses are **STRICKEN** for lack of factual support. The stricken defenses are set forth below as pleaded by Defendant in its Answer and Defenses for purposes of clarity:

> **Defense 1**: "TMS has not breached its Warranty if the Subject Vehicle's alleged defects have been corrected. Plaintiff's claim is based upon an alleged breach of TMS' Warranty. The information currently available to TMS reflects that the vehicle was repaired."
>
> **Defense 2**: "TMS has not breached its Warranty if the alleged problems with the Subject Vehicle are not defects covered by TMS' Warranty. Plaintiff's claim is based upon an alleged breach of TMS' Warranty."
>
> **Defense 3**: "To the extent that the alleged problems complained of are the result of misuse, abuse, accident, neglect, failure to follow recommendations for vehicle operation in the Owner's Manual, modifications, or improper maintenance, the problems are not covered by the Warranty and TMS is not responsible for the damages alleged by Plaintiff and may not be held liable for same. Plaintiff's claim is based upon an alleged breach of TMS' Warranty."
>
> **Defense 4**: "TMS' Warranty does not cover slight noises, vibrations, or other normal characteristics of the vehicle. Plaintiff's claim is based upon alleged breach of TMS' Warranty."
>
> **Defense 6**: "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."
>
> **Defense 8**: "To the extent that Plaintiff failed to use reasonable care to mitigate any alleged damages by taking reasonable measures to prevent and/or minimize the losses being claimed as damages in the instant matter, Plaintiff's claim for damages in this case is barred or diminished. This is a legal rather than factual defense. Plaintiff has a duty to mitigate damages."

3. The following defenses are **STRICKEN** for lack of specificity and inclusion of speculative language. The stricken defenses are set forth below as pleaded by Defendant in its Answer and Defenses for purposes of clarity:

> **Defense 5**: "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."
>
> **Defense 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)."

4. Defense 9 is **STRICKEN** as it improperly attempts to reserve the right to plead additional defenses, which lies at the discretion of the Court. Defense 9 is set forth below as pleaded by Defendant in its Answer and Defenses for purposes of clarity:

> **Defense 9**: "TMS reserves the right to plead any and all additional defenses that may become known during discovery."

5. Defendant may seek leave to amend to assert defenses that comply with Rule 1.110(d).

* * *

Landlord-tenant—Eviction—Waiver—Acceptance of rent—Landlord waived right to terminate tenancy and created a new month-to-month tenancy by accepting rent after expiration of notice of termination of tenancy—Complaint dismissed with prejudice

FATIMA MEVS, Plaintiff, v. JEFFREY WEINBERGER, Defendant. County Court, 11th Judicial Circuit in and for Miami-Dade County. Case No. 2025-172578-CC-23. Section ND06. February 18, 2026. Ayana Harris, Judge. Counsel: Carrie J. Feit, Community Justice Project, Inc., Miami, for Defendant.

ORDER GRANTING DEFENDANT'S MOTION TO DISMISS WITH PREJUDICE

THIS CAUSE having come before the Court via Defendant's Motion to Dismiss Plaintiff's Complaint for Termination of Month-to-Month Tenancy With Prejudice Based on Waiver/Estoppel (D.E. 13), and having heard argument and testimony at hearing on February 10, 2026, and being otherwise fully advised, it is hereby

ORDERED AND ADJUDGED that:

1. Defendant's Motion to Dismiss the Plaintiff's Complaint With Prejudice is GRANTED.

2. Landlord attempted to terminate tenant's tenancy with a thirty-day notice effective September 30, 2025. When tenant did not vacate, this eviction action followed.

3. Landlord thereafter accepted rent from tenant for the months of

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November 2025, December 2025, January 2026 and February 2026.

4. By accepting rent for a rental period subsequent to the expiration of the notice of termination of tenancy, the landlord (a) waived her right to terminate the tenancy based on such notice; and (b) created a new month-to-month tenancy that has not been properly terminated pursuant to Fla. Stat. 83.57.

5. Landlord failed to fulfill conditions precedent to bringing an eviction action pursuant to Fla. Stat. 83.59 and *Ferry Morse Seed Co. v. Hitchcock*, 426 So.2d 958 (Fla. 1983), and thus the Complaint is dismissed without leave to amend. *Rolling Oaks Homeowners Ass'n, Inc. v. Dade County*, 492 So. 2d 686 (Fla. 3rd DCA 1986). *See also Imperial Apartments, LLC v. Gutierrez*, 30 Fla. L. Weekly Supp. 490a (Fla. 11th Cir. App. Ct., Miami-Dade 2022) (by accepting rent for a period following the purported termination of tenancy, Plaintiff created a new month-to-month tenancy that has not been properly terminated since such notice is now moot, warranting dismissal with prejudice and without leave to amend).

6. The Court reserves jurisdiction to determine attorney's fees and costs.

* * *

Attorney's fees—Insurance—Personal injury protection—Declaratory judgment—Insured is entitled to attorney's fees and costs incurred in declaratory action filed after insurer made total coverage denial of claim where action resulted in insurer's payment of disputed medical expenses

NICOLE PUMA, Plaintiff, v. PROGRESSIVE SELECT INSURANCE COMPANY, Defendant. County Court, 13th Judicial Circuit in and for Hillsborough County, Civil Division. Case No. 25-CC-000858. March 23, 2026. Adam L. Banter, Judge. Counsel: Timothy A. Patrick, Patrick Law Group, P.A., Tampa, for Plaintiff.

ORDER GRANTING PLAINTIFF'S MOTION FOR ATTORNEY'S FEES & COSTS, ETC.

THIS CAUSE came before the Court on March 19, 2026 on Plaintiff's Motion for Attorney's Fees, Costs, etc. (Doc #19) The Court having considered the parties' motions and memoranda of law, the arguments of counsel, the record, and applicable law, and being otherwise fully advised in the premises, hereby enters the following findings of fact and conclusions of law:

1. Plaintiff filed this action seeking declaratory relief pursuant to Section 86.121, Florida Statutes, to determine insurance coverage for PIP benefits.

2. Defendant initially paid certain benefits but ultimately suspended payment of subsequent claims for additional submitted medical charges.

3. On February 13, 2025, a Default Final Judgment was entered whereby a declaratory judgment was entered in favor of Plaintiff declaring that Defendant wrongfully suspended Plaintiff's medical benefits for chiropractic treatment claims

4. In resolving fee entitlement, the Court applies the governing statutes according to their plain meaning. The Court's role is limited to applying the law as written, not to expanding or narrowing the Legislature's chosen language based upon policy considerations. Where the statutory text is clear, it controls. *See Ham v. Portfolio Recovery Assocs., LLC*, 308 So. 3d 942 (Fla. 2020) [46 Fla. L. Weekly S9a].

5. The plain text of Section 86.121(1) and (1)(b), Florida Statutes, provides that the Court shall award reasonable attorney fees to the named insured upon rendition of a declaratory judgment in the insured's favor in an action "to determine insurance coverage after the insurer has made a total coverage denial of a claim." The Court gives these terms their ordinary legal meaning and declines to add requirements not expressed in the statute.

6. This presents a two-step inquiry:

1. Was a declaratory judgment entered in favor of the named insured?
2. Did the insurer make a "total coverage denial of a claim"?

7. In the present case, it is clear that a judgment was entered in favor of the named insured. Thus, this issue turns on the second inquiry.

8. Fla. Stat. 86.121(1) indicates that the type of actions to which it applies are declaratory actions where the insurer has made a "total coverage denial of a claim."

9. As referenced above, where the statutory text is clear, it controls. *See Ham v. Portfolio Recovery Assocs., LLC*, 308 So. 3d 942 (Fla. 2020) [46 Fla. L. Weekly S9a].

10.In general, courts will look primarily to the text, within its context, and the structure of the statutory scheme in order to determine the meaning of any given text. *See Allstate Insurance Co. v. Revival Chiropratic, LLC*, 385 So.3d 107 (Fla. 2024) [49 Fla. L. Weekly S113a] (We have also recognized the fundamental principle that "[c]ontext is a primary determinant of meaning." *Lab'y Corp. of Am. v. Davis*, 339 So. 3d 318, 324 (Fla. 2022) [47 Fla. L. Weekly S134a] (quoting Scalia & Garner, supra note 1, at 167). Provisions in the texts of statutes and contracts cannot be viewed in isolation from the full textual context of which they are a part. "Under the whole-text canon, proper interpretation requires consideration of 'the entire text, in view of its structure and of the physical and logical relation of its many parts.' " *Id.* (quoting Scalia & Garner, supra note 1, at 167))

11.Importantly here, it is also an "elementary principle of statutory construction that significance and effect must be given to every word, phrase, sentence, and part of the statute if possible, and words in a statute should not be construed as mere surplusage." *School Board of Palm Beach Cty. v. Survivors Charter Schools, Inc.*, 3 So.3d 1220 (Fla. 2009) [34 Fla. L. Weekly S251a].

12.With regards to Fla. Stat. 86.121(1), had the Legislature sought to limit the award of reasonable attorney fees to only those situations where an insurer had paid nothing on any claim (or application for benefits or however a request for payment is termed) relative to a single accident or incident, the Legislature could have simply stopped at "a total coverage denial" without adding "of a claim." The latter phrase modifies the former phrase. Its effect is to allow a party to seek attorney fees for the total coverage denial of individual claims from an incident giving rise to coverage.

13.If there were any doubt with regards to this interpretation, Fla. Stat. 86.101 directs courts, with regards to Chapter 86, that "This chapter is declared to be substantive and remedial. Its purpose is to settle and to afford relief from insecurity and uncertainty with respect to rights, status, and other equitable or legal relations and is to be **liberally administered and construed**." [emphasis added]

14.The plain language of Section 627.736(15) manifests an unmistakable legislative recognition that multiple PIP "claims" can be asserted by the same health care provider treating the same insured patient for injuries sustained in the same auto accident. If only one single PIP claim could be submitted per health care provider for all services provided to a single insured patient over a prolonged time period, Section 627.736(15) would be unnecessary, meaningless, and superfluous. However, "a basic rule of statutory construction provides that the Legislature does not intend to enact useless provisions, and courts should avoid readings that would render part of a statute meaningless." *Heart of Adoptions, Inc. v. J.A.*, 963 So.2d 189, 198-199 (Fla. 2007) [34 Fla. L. Weekly S251a]; *State v. Goode*, 830 So.2d 817, 824 (Fla.2002) [27 Fla. L. Weekly S860a]). The term "total coverage denial of a claim" must be read in its entirety and every word must be given effect.

15.The PIP statute Section 627.736 uses the terms "claim" and

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"claims" interchangeably throughout the statute. Defendant made total coverage denials of multiple PIP claims submitted by Plaintiff's medical providers. Florida law recognizes that multiple "claims" can be submitted under a single insurance policy. This is particularly true in the PIP context, where healthcare providers routinely submit separate claim forms for different medical services provided on different dates.

16.Any ambiguities contained in the PIP statute are required to be construed in favor of the insured, which in this case is the Plaintiff. *See, Nunez v. Geico Gen. Ins. Co.*, 117 So.3d 388, 395 (Fla. 2013) [38 Fla. L. Weekly S440a] ("Given its purpose, both this court and the Florida Supreme Court have held the provisions of Florida's No-Fault Act must be construed liberally in favor of the insured").

17.Based on a peer review, the Defendant elected to suspended all benefits for a series of multiple PIP claims submitted by the Plaintiff. Defendant's post-suit payment constitutes functional equivalent of a confession of judgment establishing coverage in Plaintiff's favor. Accordingly, Plaintiff is entitled to an award of reasonable attorney's fees pursuant to Section 86.121(1)(b). *Katia Caballero v. Direct Gen. Ins. Co.*, Hillsborough Cty. Ct., Case No. 25-CC-005872 (Honorable James Salvatore Giardina, Judge).

18.Each of the Plaintiff's requests for PIP benefits from the Defendant was "a claim." Each of the Defendant's determinations that no payment was due in response to those PIP claims was "a total coverage denial of a claim." Because this action was brought for declaratory relief after Defendant made "a total coverage denial of a claim," and the Plaintiff received the functional equivalent of a judgement in its favor, the Plaintiff is entitled to reasonable attorney's fees and costs. *Juan Calderon v. GEICO Casualty Co.*, 32 Fla. L. Weekly Supp. 437b (Fla. 13th Jud. Cir., Hillsborough Cnty. Ct., Case No. 23-CC-21211, December 30, 2024, Honorable Francis M. Perrone, Judge).

19.Defendant's total coverage denial of multiple claims, followed by post-suit payment, falls squarely within scope of Section 86.121 and establishes Plaintiff's entitlement to attorney's fees and costs. *Marie V. Dorcely Louissant v. United Automobile Ins Co.*, (Fla. 9th Jud. Ct, Orange Cty, Case No. 25-CC005671, February 25, 2026, Adam McGinnis, Judge), citing, *Juan Calderon v. GEICO Casualty Co.,* (Fla. 13th Jud. Cir., Hillsborough Cnty. Ct., Case No. 24-CC-21211, December 30, 2024, Honorable Francis M. Perrone, Judge) [32 Fla. L. Weekly Supp. 437b] which found that the court expressly rejected the argument that a total coverage denial of a claim requires denial of all benefits under the policy.

20.After a peer review, Defendant suspended benefits on a multiple PIP claims submitted by the Plaintiff. Defendant's post-suit payment constitutes functional equivalent of a confession of judgment establishing coverage in Plaintiff's favor. Defendant's Motion for Entry of Order Denying Plaintiff 's Request for Declaratory Relief as to Coverage & Declaring No Entitlement to Fees is Denied. *Jose Rodriguez v. Infinity Assurance Ins. Co.*, (Fla. 13th Jud. Cir. Ct., Hillsborough Cty., Case No. 25-CC-051901, February 20, 2026, James Salvatore Giardina, Judge).

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

1. Plaintiff's Motion for Attorney's Fees and Costs, Etc. is **HEREBY GRANTED**, as to the issue of entitlement.

2. The Court reserves jurisdiction to determine the reasonable amount of attorney's fees and costs upon further hearing.

* * *

Insurance—Automobile—Rescission of policy—Material misrepresentations on application—Failure to disclose household resident—Summary judgment—Supporting affidavits—Motion to strike insurer's affidavit in support of its motion for summary judgment regarding policy rescission is granted—Deposition of affiant shows that he was not an underwriter and, therefore, did not have requisite personal knowledge under rule 1.510 to support policy rescission—Insurer's motions for summary judgment are denied where insurer failed to file an affidavit of an underwriter to demonstrate that premium increase would have occurred if other household residents were disclosed and filed no admissible evidence showing that a misrepresentation occurred—Additionally, insurer failed to rebut affidavits of insured and her underwriting expert which attested that insurer's online quote tool solicited only the names of drivers of insured vehicle, not household residents; that insured never saw application insurer relied upon to support claimed misrepresentation; and that no valid premium or surcharge could have been applied due to disclosure of non-driver household residents—Plaintiff's motion for final summary judgment granted

DARNIQUE DIXON, Plaintiff, v. DIRECT GENERAL INSURANCE COMPANY, Defendant. County Court, 13th Judicial Circuit in and for Hillsborough County, County Civil Division. Case No. 25-CC-027025. March 13, 2026. Chet Tharpe, Senior Judge. Counsel: Timothy A. Patrick, Patrick Law Group, P.A., Tampa, for Plaintiff. Marsha Moses, Teodora Siderova & Michael Clarke, Kubicki Draper, for Defendant.

AMENDED ORDER GRANTING PLAINTIFF'S MOTION TO STRIKE AFFIDAVIT OF TRAVIS HOLMES, ORDER GRANTING PLAINTIFF'S MOTION FOR FINAL SUMMARY JUDGMENT & ORDER DENYING BOTH OF DEFENDANT'S MOTIONS FOR SUMMARY JUDGMENT

THIS MATTER having come before the court on December 18, 2025 on Plaintiff's Motion to Strike Affidavit of Travis Holmes , Plaintiff's Motion for Final Summary Judgment, Defendant's Motion for Summary Judgment Regarding Lack of Standing and Defendant's Motion for Summary Judgment Regarding Policy Rescission. The court having reviewed the file, considered the motions, the arguments presented by counsel, applicable law, for the reasons stated on the record and being otherwise fully advised, finds,

1. Plaintiff filed a declaratory judgment action seeking a coverage declaration based upon Defendant's alleged wrongful rescission of Plaintiff's insurance policy and subsequent denial of coverage based upon Plaintiff's alleged material misrepresentation in the on-line application for insurance.

2. Before the Defendant rescinded Plaintiff's insurance policy, she was involved in a motor vehicle accident that was covered by PIP and Property Damage coverages under her insurance policy with Defendant. Plaintiff and her medical providers filed PIP claims seeking payment of her medical bills. Plaintiff also filed a claim for the property damage to her vehicle. The Defendant subsequently denied coverage and refused to pay Plaintiff's claims. Plaintiff then filed the instant lawsuit seeking a declaratory judgment against the Defendant.

3. In support of its rescission, Defendant claims that Plaintiff made a material misrepresentation on the application for the subject policy by failing to disclose household members on the application for insurance. Plaintiff contends that during Defendant's Online Quote Tool process, Plaintiff was only asked prompted questions concerning who would be driving her insured vehicle. Inasmuch as no one else drove her Nissan Sentra, Plaintiff only listed herself. Plaintiff contends that during this on Online Quote process, she was never presented with the application for insurance document that Defendant relies upon.

Plaintiff filed an affidavit from David B. Miller, an insurance and underwriting expert with over 40 years of experience in the insurance field. Miller's affidavit concludes that no valid premium or surcharge could have applied for listing or excluding non-driver household residents on a PIP/PD only policy. Said affidavit also confirms that Defendant's Online Quote Tool system does not solicit disclosure of

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all household residents age 15 or older. Instead, it asks about drivers only. Miller concludes that Plaintiff did not fail to disclose material information because Defendant's Online Quote Tool system does not solicit information regarding household residents and asks about drivers only. As such, Plaintiff did not commit a material misrepresentation.

1. The Court find that the affidavit of Miller was unrebutted by Defendant.

2. Plaintiff filed an affidavit of Plaintiff which stated:

> I went onto the Direct General Online Quote Tool system. I truthfully answered all questions that were prompted to me during the process. The prompted questions asked who would be the drivers of the insured vehicle. Inasmuch as I am the only driver of my 2012 Nissan Sissan, I listed myself and no one else. The questions only asked about drivers of the insured vehicle. No one else has ever driven my Nissan Sentra.
>
> The document titled application for insurance was not presented to me during the online quote process. I was not given the opportunity to review this application during the online quote process. I merely truthfully answered the prompted questions which were not the same as the questions listed in the application for insurance which I only received later.

1. The Court find that the affidavit of Plaintiff was unrebutted by Defendant.

2. Defendant filed its Motion for Final Summary Judgment Regarding Policy Rescission and filed a Notice of Filing Affidavit of Travis Holmes in Support thereof.

3. On September 5, 2025, Plaintiff conducted the deposition of Travis Holmes, who is a litigation adjuster of Defendant. Plaintiff attached the deposition transcript of Mr. Holmes to its Motion for Final Summary Judgment and Motion to Strike Affidavit.

4. It is undisputed that Defendant did not file an affidavit from underwriter in support of its Motion for Summary Judgment.

5. Mr. Holmes admits throughout the deposition that he does not work in underwriting and does not have any personal knowledge over the truthfulness or accuracy of any of the statements made from underwriting.

6. The fact that Mr. Holmes is not an underwriter automatically demonstrates that he does not have the requisite personal knowledge under Rule 1.510 to support a policy rescission. As such, his affidavit should be stricken.

7. *Path Medical, LLC (a/a/o Kayla Castor) v. United Auto. Ins. Co.* (Fla. 12th Jud. Cir. Ct. Sarasota Cty., Case No. 2023-CC-006450 NC, May 12, 2025, Kennedy Legler, Judge) [33 Fla. L. Weekly Supp. 127c] cited the correct state of the law as follows:

> "The Court has reviewed the subject affidavits and has reviewed the controlling precedent of *Sunita Roberts v. Direct General Ins. Co.*, 337 So. 3d 889, [47 Fla L. Weekly D737b] (Fla. 2d DCA 2022). While the affidavit does track the personal knowledge language contained in *Roberts*, the affidavit does not contain any explanation as to how the alleged premium increase was calculated or determined. Based upon striking of underwriter's affidavit, carrier had no admissible evidence regarding the materiality of alleged misrepresentation/omission. Final summary judgment granted for insured. *Direct Gen. Ins. Co. v. Melissa Bailey Grooms & Julie Grooms,* 32 Fla. L. Weekly Supp. 122a (Fla. 13th Jud. Cir. Ct., Hillsborough Cty., Case No. 22-CA-007911, June 11, 2024, Mark R. Wolfe, Judge). Based upon striking of underwriter's affidavit, carrier had no admissible evidence regarding the materiality of alleged misrepresentation/omission. Final summary judgment granted for insured. *Direct Gen. Ins. Co. v. Nydreka Williams,* 30 Fla. L. Weekly Supp. 173a (Fla. 13th Jud. Cir. Ct., Hillsborough Cty., Case No. 20-CC-028479, June 12, 2022, Michael C. Bagge-Hernandez, Judge).

1. Insurer failed to present admissible evidence of materiality of omissions. *See Affirmative Insurance Co. v. Bayview Medical & Rehab Center, Inc. (a/a/o Felipe Posas)*, 16 Fla. L. Weekly Supp. 213c (Fla. 13th Jud. Cir. Ct., Hillsborough Cty. [Appellate]) January 15, 2009) citing to *GRG Transport Inc. v. Certain Underwriters at Lloyd's London,* 896 So.2d 922 (Fla. 3d DCA 2005) [30 Fla. L. Weekly D600a] (holding that affidavit of underwriter is required to opine regarding the increase of insurance premiums).

2. Plaintiff's Motion to Strike Amended Affidavit of Travis Holmes is **HEREBY GRANTED**.

3. Defendant's Motion for Summary Judgment Regarding Lack of Standing is **HEREBY DENIED**.

4. Defendant failed to file an affidavit from an underwriter, which is clearly their burden to demonstrate that a premium increase would have occurred. Defendant has filed no admissible evidence to support that a misrepresentation occurred, much less that it was material. Defendant failed to file anything to contradict the sworn affidavits of Plaintiff and underwriting expert, David Miller. Accordingly, there is no genuine issue of material fact that Defendant improperly rescinded the subject policy. As such, Plaintiff's Motion for Final Summary Judgment is **HEREBY GRANTED.**

5. Defendant's Motion for Summary Judgment Regarding Policy Rescission is **HEREBY DENIED**.

* * *

Civil procedure—Answer—Amendment—Prejudice—Defendant's motion to amend answer and affirmative defenses seeking to assert additional and more definitive statement of defenses is granted where leave was sought prior to a hearing on summary judgment, it is defendant's first request to amend, and plaintiff would not be prejudiced—Fact that newly sought defense would bar plaintiff's claim does not mean amendment would result in prejudice to plaintiff as prejudice is reviewed in a procedural context—Although deadline to amend set forth in case management order has passed, along with all other deadlines, this was the fault of both parties' failure to comply and advance case as ordered—Plaintiff has ability to prepare for new defenses prior to trial because no trial date has been set

MRI ASSOCIATES OF PALM HARBOR, a/a/o Janelle Hall, Plaintiff, v. GEICO GENERAL INS. CO., Defendants. County Court, 13th Judicial Circuit in and for Hillsborough County, Civil Division. Case No. 24-CC-19763. Division I. March 18, 2026. Christine D. Edwards, Judge. Counsel: Matthew Brumley, Florida Legal Group, Tampa, for Plaintiff. Melanie Smith, Law Offices of Dillon K. McLean, Orlando, for Defendant.

ORDER GRANTING DEFENDANT'S MOTION TO AMEND ANSWER AND AFFIRMATIVE DEFENSES

THIS CAUSE comes before the Court on March 11, 2026 upon Defendant's Motion to Amend Answer and Affirmative Defenses. Matthew Brumley, Esquire, appeared on behalf of the Plaintiff and Melanie Smith, Esquire appeared on behalf of the Defendant. The Court reviewed the motion and case file; heard argument from the Parties; and, otherwise being duly advised in the premises, makes the following findings of fact and conclusions of law:

A party may amend a pleading by leave of court absent consent of the adverse party. Fla. R. Civ. P. 1.190(a). Leave of court shall be given freely when justice so requires. *Id.* Public policy favors liberality in granting leave to amend pleadings in favor of deciding cases on their merits. *Laurencio v. Deutsche Bank Nat. Trust Co.*, 65 So.3d 1190, 1193 (Fla. 2d DCA 2011) [36 Fla. L. Weekly D1600b]. This is especially true when leave is sought at or before a hearing on a motion for summary judgment. *Id.* Refusal to allow an amendment of a pleading is an abuse of the trial court's discretion unless it clearly appears that allowing the amendment would prejudice the opposing party; the privilege to amend has been abused; or amendment would

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be futile. *Id*.

Here, leave is sought prior to a hearing on summary judgment, and this is the first time the Defendant has sought to amend. The proposed amendment seeks to assert additional and a more definite statement as to defenses (¶6 of Doc. 26). Each Party argues respectively the first prong of the analysis, prejudice. Plaintiff contends allowing the amendment which includes an affirmative defense denying PIP coverage essentially bars Plaintiff's claim, resulting in extreme prejudice. Defendant contends prejudice is reviewed in a procedural context, distinguishing between cases postured before and after summary judgment hearing. The Court agrees.

Whether granting the proposed amendment would prejudice the opposing party is analyzed primarily in the context of the opposing party's ability to prepare for the new allegations or defenses prior to trial. *Drish v. Bos*, 298 So.3d 722, 724 (Fla. 2d DCA 2020) [45 Fla. L. Weekly D1626a]. A denial of leave to amend a pleading is an abuse of discretion where the proffered amendment indicates that a plaintiff can state a cause of action. The same holds true where a defendant demonstrates he could prevail with the assertion of a properly available defense. *Laurencio*, 65 So.3d at 1193 (quoting *Wayne Creasy Agency, Inc. v. Maillard*, 604 So.2d 1235, 1236 (Fla. 3d DCA 1992)).

In *Bacchiocchi*, in which the Plaintiff relies, a dismissal with prejudice was entered with an express provision granting appellants leave to amend the crossclaim within twenty days. Instead of amending, the appellants attempted to appeal the dismissal. Then, when their appeal was dismissed, the appellants sought leave to amend that which they were expressly told to do in previous court order. The Court affirmed the lower court's denial of leave to amend, distinguishing a situation where the policy favoring liberality shouldn't govern. *New River Yachting Center, Inc. v. Bacchiocchi*, 407 So.2d 607, 608-9 (Fla. 4th DCA 1981) (. . ."[n]one of these cases involve violation of a court order setting a time limit for amendment. Fla. R. Civ. P. 1.420(b) provides for involuntary dismissal for failure to comply with any order of the court. This rule has been applied to uphold the trial court's discretion in dismissing for failure to amend a pleading within the time limit set by the court.")). Firstly, *Bacchiocchi* primarily considered prejudice in a procedural context, the position advocated by the defense. Secondly, this Court declines to apply the outcome in *Bacchiocchi* here where the order deemed violated is a Differentiated Case Management (DCM) Order (Doc. 10). As a result of both Parties' failure to comply with the DCM and advance the case as ordered, all deadlines, not just the deadline to amend, have expired. Plaintiff has an ability to prepare for the new defenses prior to trial because no trial date is set.

It is therefore **ORDERED AND ADJUDGED:**

1. Defendant's Motion to Amend Answer and Affirmative Defenses is hereby **GRANTED**.

2. Defendant's Amended Answer, Affirmative Defenses and Demand for Jury Trial is hereby deemed filed.

*   *   *

Insurance—Declaratory judgments—Attorney's fees—Prevailing party—Motion to strike insured's motion for attorney's fees pursuant to section 86.121(1) is denied as premature where no judgment or decree has yet been rendered

ROSABELKIS JIMENEZ, Plaintiff, v. DIRECT GENERAL INSURANCE COMPANY, Defendant. County Court, 13th Judicial Circuit in and for Hillsborough County, Civil Division. Case No. 25-CC-005873. March 19, 2026. Adam L. Bantner, Judge. Counsel: Timothy A. Patrick, Patrick Law Group, P.A., Tampa, for Plaintiff. Marsha Moses, Kubicki Draper, for Defendant.

ORDER DENYING DEFENDANT'S MOTION TO STRIKE PLAINTIFF'S CLAIM FOR ATTORNEY'S FEES & COSTS PURSUANT TO SECTION 86.121(1)

THIS MATTER having come before the court on March 18, 2026 on Plaintiff's Amended Motion for Entitlement of Attorney's Fees Pursuant to F.S. 57.105. (Doc #92), Defendant's Motion to Strike Plaintiff's Claim for Attorney's Fees and Costs Pursuant to Section 86.121(1) (Doc #81). Having reviewed and considered the motions, the supporting memoranda, the relevant materials in the file, the arguments presented by counsel, and the applicable law, and being otherwise fully advised, the Court finds as follows:

1. The Court finds that F.S. Section 86.121(1) requires that a judgment or decree must be rendered in favor of the named insured, omnibus insured or named beneficiary. Inasmuch as a judgment or decree has not been rendered yet, Defendant's motion is premature. As such, Defendant's Motion to Strike Plaintiff's Claim for Attorney's Fees and Costs Pursuant to Section 86.121(1) is **HEREBY DENIED**.

2. The Court takes no action at this time on Plaintiff's Amended Motion for Entitlement of Attorney's Fees Pursuant to F.S. 57.105.

*   *   *

Criminal law—Driving under influence—Evidence—Urine test results—Where defendant's breath alcohol level was .000, which was inconsistent with officer's observations of defendant's many indicia of impairment and his impaired appearance on recording from officer's body-worn camera, results of urine test showing presence of metabolite of THC is relevant as to whether defendant was driving under influence of controlled substance—Relevance of presence of metabolite is not outweighed by danger of unfair prejudice—Motion in limine is denied

STATE OF FLORIDA, Plaintiff, v. RUBEN ANDRES RESTREPO, Defendant. County Court, 13th Judicial Circuit in and for Hillsborough County. Case No. 25-CT-15847. Division D. April 22, 2026. Christopher E. Brown, Judge.

ORDER ON DEFENDANT'S AMENDED MOTION IN LIMINE

THIS CAUSE having come before the Court on April 21, 2026, for a hearing on Defendant's *Amended Motion in Limine* (Doc. 39), and the Court having heard the testimony and evidence in this case, heard argument of Counsel, and otherwise being fully apprised on the issues, hereby finds as follows:

Findings of Fact

On October 4, 2025, Tampa Police Department Officer John Baker, was on routine patrol in a marked vehicle traveling east on the Selmon Expressway, in Hillsborough County, Florida. At approximately 12:57 a.m., Officer Baker observed a blue Hyundai Florida Tag 40BKHW ("Hyundai"), also traveling east on the Selmon Expressway. Officer Baker paced the vehicle and noted that it accelerated to 80 miles per hour and then slowed to 40 miles per hour on more than one occasion, in a 55 mph zone. Officer Baker also observed the Hyundai cross over the lane divider more than five times. Based on this driving pattern, Officer Baker initiated a traffic stop.

As testified by Officer Baker and as shown by his Body Camera Recording ("BWC") (Exhibit "1"), upon making contact with the driver of the Hyundai, later identified as Defendant, Officer Baker observed that he had a blank stare, bloodshot/watery eyes, and strange or slowed responses. Defendant admitted consuming alcohol before driving, stating that he had one "Arizona" drink.

Officer Baker had Defendant perform field sobriety exercises, beginning with HGN, where Defendant did not follow instructions and his eyes appeared red. Defendant then performed the walk and turn exercise. According to Officer Baker and as shown by the BWC recording, he performed "poorly" and exhibited several indicators of impairment. Defendant then performed the one leg stand exercise. As testified by Officer Baker and as shown on the BWC recording, he performed poorly, exhibiting several indicators of impairment. Officer Baker also observed that Defendant had eyelid tremors and leg

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tremors, which Defendant attributed to the cold even though the ambient air temperature was approximately 78 degrees.

Defendant was then arrested for DUI. During a search of the vehicle pursuant to impound, an open container of "Arizona "Spiked Tea, an alcoholic beverage, was found. After being placed under arrest, Officer Baker stated that he was going to take Defendant to Central Breath Testing where he was going to request that Defendant provide breath samples and possibly a urine sample. (Exhibit "1"at 1:13:00). Once at Central Breath Testing, Defendant provided two breath samples that registered .000. The Defendant provided a urine sample, which was later analyzed by FDLE and showed the presence of "11-Nor-9-carboxy-delta-9-tetrahydrocannabinol."

***Amended Motion in Limine* (Doc. 39)**

Defendant's *Amended Motion in Limine* argues that "11-Nor-9-carboxy-delta-9-tetrahydrocannabinol is the inert metabolite break-down of the parent drug marijuana and, by itself, has no impact on impairment." (Doc. 39, p. 1). Defendant requests an Order prohibiting the State from introducing evidence or eliciting testimony at trial on the content of the FDLE report or the results of the urine test.

In support of this request, Defendant argues that the report and the information in it is has no probative value, and any value of the evidence would be substantially outweighed by unfair prejudice. Defendant relies primarily on *State v. McClain,* 525 So.2d 420 (Fla. 1988), and *Estrich v. State,* 995 So.2d 613 (Fla. 4th DCA 2008) [33 Fla. L. Weekly D2726b].[1]

The State objects to the motion and argues that Defendant's cases are misapplied and distinguishable from this case. In support of its position, the State relies on *State v. Weitz,* 500 So.2d 657 (Fla. 1st DCA 1987), and *State v. Sercey,* 825 So.2d 959 (Fla. 1st DCA 2002) [27 Fla. L. Weekly D1415b].[2]

It is axiomatic that "[a]ll relevant evidence is admissible, except as provided by law." Florida Statute 90.402. However, "[r]elevant evidence is inadmissible if its probative value is substantially out-weighed by the danger of unfair prejudice. . ." Florida Statute 90.403. This "compels the trial court to weigh the danger of unfair prejudice against the probative value." *State v. McClain,* 525 So.2d 420, 422 (Fla. 1988). "Prejudice" under Florida Statute 90.403, is "directed at evidence which inflames the jury or appeals improperly to the jury's emotions. Only when that unfair prejudice substantially outweighs the probative value of the evidence is the evidence excluded." *Id.*

Defendant relies on *State v. McClain,* 525 So.2d 420 (Fla. 1988). In that case, McClain was charged with vehicular manslaughter while intoxicated. Blood taken from McClain showed a blood alcohol level of .14 and a trace amount of cocaine. The cocaine was suppressed by the trial court. On appeal, the Supreme Court found that the challenged evidence must be viewed in light of its relationship with the other evidence in the case. Because McClain's blood alcohol level substantially exceeded the figure necessary to raise a presumption of impairment, the evidence of a trace amount of cocaine "added little to the state's proof of intoxication" and was appropriately excluded. *State v. McClain,* 525 So.2d 420, 423 (Fla. 1988).

Defendant also relies on *Estrich v. State,* , 995 So.2d 613 (Fla. 4th DCA 2008) [33 Fla. L. Weekly D2726b], where Estrich was charged with, inter alia, DUI manslaughter. The chemical analysis of Estrich's blood showed the presence of Alprazolam (Xanax) and marijuana metabolites ("Delta 9 carboxy"). Estrich moved to exclude evidence about the marijuana metabolite arguing that it was unfairly prejudicial but the trial court denied Estrich's request. During trial, the state conceded that the marijuana metabolite in the defendant's blood "did not contribute to the crash" since "the heart of the state's case was the drug Xanax." *Estrich* at 617. As a result, the Fourth District Court of Appeal found that the relevance of the presence of the marijuana metabolite was substantially outweighed by the danger of unfair prejudice.

Defendant also relies on *State v. Freeman,* 33 Fla. L. Weekly Supp. 256a (Seminole County 2025),[3] a factually similar case, where Freeman was arrested for DUI, gave breath samples of .000, and his urine was positive for 11-Nor-9-carboxy-delta-9-tetrahydrocanna-binol. That Court found that, unless the State had an expert who could testify that 11-Nor-9-carboxy-delta-9-tetrahydrocannabinol in a defendant's urine meant that the defendant was under the influence of THC, the results would irrelevant and inadmissible.

In *State v. Weitz,* 500 So.2d 657 (Fla. 1st DCA 1986), Weitz was charged with DUI. The officer arrested the defendant after he caused an accident, did not perform well on field sobriety exercises, smelled of an alcoholic beverage, and admitted he had consumed three beers. Two chemical breath tests revealed a .017 blood alcohol level, which was inconsistent with Weitz' apparent state of intoxication. A urine sample disclosed the presence of an unquantified amount of methaqualone, cocaine, and phenobarbital. The First DCA found that this evidence's prejudice did not outweigh its probative value. *See also Hoffman v. State,* 743 So. 2d 130 (Fla. 4th DCA 1999) [24 Fla. L. Weekly D2247b].

During the hearing in this case, the State called Florida Department of Law Enforcement Laboratory Analyst Laura McCool, who testified that 11-Nor-9-carboxy-delta-9-tetrahydrocannabinol is the main metabolite of THC. Analyst McCool also testified that the presence of the metabolite establishes that a subject ingested THC within thirty minutes to five days from time of the urine sample. Analyst McCool also testified that signs of THC consumption include bloodshot eyes, delayed responses, cognitive impairment, physical impairment, and tremors.

There is no dispute the Defendant's blood alcohol level was .000, which, as in *Weitz,* is inconsistent with Officer Baker's observations and Defendant's appearance in the BWC recording. Specifically, Officer Baker testified that Defendant was speeding, crossed over the lane divider more than five times, had eyelid tremors, and had leg tremors. Officer Baker also testified, and the BWC recording establishes that Defendant had bloodshot eyes, lethargic movements, admitted to consuming alcohol before driving, and performed poorly on the field sobriety exercises. In viewing the urine results in light of its relationship with the other evidence in the case, it is clear that the results of the urine analysis is relevant as to whether the Defendant was driving under the influence of a controlled substance.

As in *State v. Tagner,* 673 So.2d 57 (Fla. 4th DCA 1996) [21 Fla. L. Weekly D710a], the urine analysis should not be excluded solely on a determination that such evidence had "no measurable effect." Unlike in *Estrich v. State,* 995 So.2d 613 (Fla. 4th DCA 2008) [33 Fla. L. Weekly D2726b], the DUI charge in this case is predicated on the allegation that Defendant was under the influence of a controlled substance (THC) to the extent that his normal faculties were impaired.

Therefore, in balancing that relevance against the danger of any unfair prejudice, and considering the facts of this case and the case law as set forth above, the Court finds that the relevance of the presence of the metabolite is not outweighed by the danger of unfair prejudice. *See also State v. Sercey*, 825 So.2d 959 (Fla. 1st DCA 2002) [27 Fla. L. Weekly D1415b].

Accordingly, it is hereby ORDERED and ADJUDGED that:

1. Defendant's *Amended Motion in Limine* (Doc. 39), is DENIED, without prejudice.

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[1]Defendant also cites to: *State v. Freeman,* 33 Fla. L. Weekly Supp. 256a (Seminole County 2025); *U.S. v. Youngbear,* 2014 WL 6680868 (N.D. Iowa 2014); *Bieberle v. U.S.,* 255 F.Supp.2d 1190 (D. Kansas 2003); *Indemnity Insurance v. Pettit,* 2006 WL 8432396 (D. Wyoming 2006); *Battle v. Gold Kist,* 2008 WL 4097717 (M.D. Florida 2008); *State v. Tagner,* 673 So.2d 57 (Fla. 4th DCA 1996) [21 Fla. L. Weekly D710a];

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and *State v. Sercey,* 825 So.2d 959 (Fla. 1st DCA 2002) [27 Fla. L. Weekly D1415b].

[2]The State also cites to *State v. O'Connor,* 31 Fla. Supp.2d 50 (Palm Beach County 1988); *State v. McClain,* 525 So.2d 420 (Fla. 1988); and *State v. Reynoso,* 27 Fla. L. Weekly Supp. 84a (Manatee County 2018).

[3]This Court notes that decisions of one County court are not binding precedent on another County court because trial courts do not create precedent. *State v. Riley,* 698 So.2d 374 (Fla. 2d DCA 1997) [22 Fla. L. Weekly D1999b]; *State v. Bamber,* 592 So.2d 1129 (Fla. 2d DCA 1991).

* * *

Traffic infractions—Red-light camera violations—Constitutionality of statute—Although nominally civil in nature, traffic infraction proceedings are quasi-criminal and subject to procedural due process protections applicable in criminal cases—Statute that designates owner of vehicle involved in red-light camera violation as presumptively responsible for violation and places duty on owner to produce affirmative proof of another's guilt creates mandatory rebuttable presumption that impermissibly shifts state's burden of proof to defendant—No merit to argument that red-light camera statute need only satisfy rational-basis review applicable to a substantive due process challenge where statute's requirement of proof beyond reasonable doubt implicates procedural due process—Motion to dismiss is granted

STATE OF FLORIDA, Plaintiff, v. KAYLA ERIN MCFADDEN, Defendant. County Court, 17th Judicial Circuit in and for Broward County. Case No. 25135882TI20A. Citation No. ALY6VNE. Division ND. March 3, 2026. Steve P. DeLuca, Judge. Counsel: Robert M. Ruiz, Assistant City Attorney, Sunrise, for Plaintiff. Bret L. Lusskin, Golden Beach, for Defendant.

ORDER GRANTING MOTION TO DISMISS

This matter came before the Court on Defendant's Motion to Dismiss a photo-enforced traffic infraction citation issued pursuant to section 316.0083, Florida Statutes. The citation was issued to Defendant as the registered owner of a motor vehicle alleged to have entered an intersection against a red signal, based upon images captured by an automated traffic enforcement system. Defendant moves to dismiss the citation on the grounds that section 316.0083 unconstitutionally shifts the burden of proof onto the accused registered owner of the vehicle, requiring him or her to disprove guilt for the alleged offense. Defendant contends that this burden-shifting framework is incompatible with the Due Process Clauses of the United States and Florida Constitution, as well as section 318.14(6), Florida Statutes, which expressly provides that traffic violations must be proved beyond a reasonable doubt.

The City of Sunrise appeared through counsel in opposition. The Court heard oral argument on October 28, 2025, at which both parties were afforded a full opportunity to be heard. Having carefully considered the motion, the response, arguments of counsel, and applicable law, the Court now enters this Order.

I. FACTUAL BACKGROUND

The material facts in this case are not in dispute. On May 27, 2025, a vehicle registered to Defendant was recorded by the City of Sunrise's red-light camera system traveling northbound through the intersection of North University Drive and NW 25th Court after the traffic signal for those lanes had turned red. Pursuant to Fla. Stat. § 316.0083, the City thereafter issued a Notice of Violation to Defendant on June 26, 2025, alleging a violation of sections 316.074(1) and 316.075(1)(c)1. On September 11, 2025, when no payment or other election was received by the City, the City issued a Uniform Traffic Citation, number ALY6VNE, to Defendant for the same alleged infraction.

On September 19, 2025, Defendant, through counsel, entered a written plea of not guilty and requested a hearing before this Court. The City subsequently filed its supporting documentation, including copies of the Notice of Violation, the Uniform Traffic Citation, and related materials generated by the automated enforcement system. On October 1, 2025, Defendant filed the instant Motion to Dismiss and a Notice of Constitutional Question pursuant to Rule 1.071 of the Florida Rules of Civil Procedure. Defendant thereafter filed a Notice of Compliance confirming service upon the State Attorney and the Attorney General.

II. STATUTORY FRAMEWORK

Section 316.0083, Florida Statutes, known as the "Mark Wandall Traffic Safety Act," authorizes local governments to implement automated red-light enforcement systems that utilize photographic evidence to identify potential violations of sections 316.074(1) and 316.075(1)(c)1., which require drivers to obey traffic control signals. When such a violation is detected, the enforcing agency does not immediately issue a Uniform Traffic Citation ("UTC"). Instead, the statute establishes a two-step enforcement process.

First, the registered owner of the vehicle is mailed a *Notice of Violation* advising of the alleged infraction and demanding payment of a $158 civil penalty. *See* Fla. Stat. § 316.0083(1)(b)1.a. The Notice affords the recipient sixty (60) days to either remit payment, submit an affidavit contesting responsibility, or request an administrative hearing before a local hearing officer. The administrative hearing process is distinct from the judicial process in county court.

This administrative hearing is before a hearing officer who is an employee of the city; hired and paid by the city; and subject to firing by the city.

A person who wishes to contest the alleged violation in court must decline the administrative option and instead await issuance of a UTC. If the recipient does not respond to the Notice within the prescribed time, the local government may issue a formal Uniform Traffic Citation (hereinafter "UTC") pursuant to section 316.0083(1)(c), which transfers the matter to the state court system under Chapter 318.

At that stage, the penalty increases to a minimum of $277, and any adjudication of guilt is entered on the defendant's official motor vehicle record. In this case, even if the defendant is found guilty, points against the defendant are not, and cannot, be imposed. The point system, which helps identify errant drivers who should be remediated or whose driver's license should be suspended or revoked, is abandoned, leaving only a monetary sanction, fine, available. A defendant can accrue unlimited red-light camera violations addressed in court, with the court and the powerless Department of Highway Safety and Motor Vehicles to remove this habitual errant driver from the road. So long as the fine is paid, the license cannot be suspended.

To be clear: In the traditional police officer witnessed red light violation case, the officer observes what he or she believes to be a violation, then conducts a traffic stop, determines if there is an emergency or malfunctioning red light equipment, and then issues a uniform traffic citation to the actual alleged violation. If the defendant pleads or is found guilty the violator is identified and the violation is entered upon the defendant's driver's license record. Points may or may not be imposed depending on the facts and driving record of the defendant present before the court. Under this red-light camera scenario the actual violator is never identified and if payment is made within the first 30 days of notification, then no evidence of the violation will appear on anyone's driving record whether as an incident of ownership or as having been the violator. This scheme abandons the point system of F.S. §322.27 to help identify errant and dangerous drivers which has been in place for over 50 years.

§322.27. Authority of department to suspend or revoke states in part:

(3) There is established a point system . . . .**for the determination of the continuing qualification of any person to operate a motor vehicle. . . .** (emphasis added.)

(a) When a licensee accumulates 12 points within a 12-month period, the period of suspension shall be for not more than 30 days.

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(b) When a licensee accumulates 18 points, including points upon which suspension action is taken under paragraph (a), within an 18-month period, the suspension shall be for a period of not more than 3 months.

(c) When a licensee accumulates 24 points, including points upon which suspension action is taken under paragraphs (a) and (b), within a 36-month period, the suspension shall be for a period of not more than 1 year.

d) The point system shall have as its basic element a graduated scale of points assigning relative values to convictions of the following violations:

. . . . **6.** A violation of a traffic control signal device as provided in *s. 316.074(1)* or *s. 316.075(1)(c)* 1.-4 points. (Traditional Red Light Enforcement.) *However, no points shall be imposed for a violation of s. 316.074(1) or s. 316.075(1)(c) 1. when a driver has failed to stop at a traffic signal and when enforced by a traffic infraction enforcement officer. (Red Light Camera Enforcement.) In addition, a violation of s. 316.0741(1) or s. 316.075(1)(c) 1. when a driver has failed to stop at a traffic signal and when enforced by a traffic infraction enforcement officer (Red Light Camera Enforcement) may not be used for purposes of setting motor vehicle insurance rates.*

Under this Red Light Camera scheme employers may never know that the people who they are hiring to drive our school busses, or who are driving the 9,000 gallons of gasoline as Class A fuel tanker truck operators, are errant and dangerous and are habitual red light runners because they repeatedly paid within the first 30 days and no State Driver's License Record entry was created. The errant driver, the violator, is never identified for remediation or removal from our streets. In the case of commercial drivers, this seems to be inconsistent with federal statutes involving masking.

Once the UTC is issued, after the defendant fails to respond to the city, the defendant may either pay the UTC or elect to contest it in county court, where proceedings are governed by Chapter 318.

A distinctive feature of the statutory scheme is its assignment of guilt to the *registered owner* rather than the *driver* of the vehicle. Section 316.0083(1)(d)1. provides that "[t]he owner of the motor vehicle involved in the violation is responsible and liable for paying the uniform traffic citation issued for a violation of s. 316.074(1) or s. 316.075(1)(c)1. when the driver failed to stop at a traffic signal, unless the owner can establish" one of several enumerated defenses. If there are multiple registered owners, the citation is issued to the "first" registered "owner".

One of the defenses is that the registered owner was not the driver. To contest responsibility on this ground, the registered owner must submit an affidavit stating that "[t]he motor vehicle was, at the time of the violation, in the care, custody, or control of another person." The affidavit must include the name, address, date of birth, and, if known, the driver's license number of that individual. § 316.0083(1)(d)1. Upon receipt of such an affidavit, "the governmental entity must dismiss the citation," and the designated person "may be issued a notice of violation" for the same offense. *Id.* "The affidavit is admissible in a proceeding pursuant to this section for the purpose of providing proof that the person identified in the affidavit was in actual care, custody, or control of the motor vehicle" *Id.* abandoning centuries time honored protections of hearsay substantive evidence.

Accordingly, under this statutory framework, liability initially attaches to the registered owner by presumption, and the burden rests with the owner to affirmatively identify another person as the driver[1] or otherwise contest the charge at a traffic infraction hearing.

III. ISSUE PRESENTED

The question before the Court is whether Fla. Stat. § 316.0083 violates the Due Process Clauses of the United States and Florida Constitutions by creating a mandatory rebuttable presumption that the registered owner of a vehicle is guilty of committing a red-light violation unless the owner affirmatively identifies another driver, thereby shifting the burden of proof from the prosecution onto the accused, in a proceeding where commission of the offense must be proved beyond a reasonable doubt. *See* § 318.14(6).

IV. ANALYSIS

A. Governing Principles

It is a foundational rule of constitutional due process that the government must prove every fact necessary to constitute an offense beyond a reasonable doubt before a person may be adjudicated guilty of a crime. *In re Winship*, 397 U.S. 358, 364 (1970). The reasonable-doubt standard is not merely a rule of evidence; it is a constitutional guarantee that "protects the accused against conviction except upon proof beyond a reasonable doubt of every fact necessary to constitute the crime with which he is charged." *Id.* at 364. Any procedure that allows conviction while relieving the government of this burden violates the Due Process Clause. *Id.* at 363-64.

The Supreme Court has repeatedly applied this principle to strike down statutory or jury-instruction presumptions that shift the burden of proof to the accused as to any element of the offense. In *Sandstrom v. Montana*, 442 U.S. 510 (1979), the Court held unconstitutional an instruction that "the law presumes that a person intends the ordinary consequences of his voluntary acts," reasoning that such a presumption "had the effect of relieving the State of the burden of proof enunciated in *Winship*." *Id.* at 521. Likewise, in *Francis v. Franklin*, 471 U.S. 307 (1985), the Court reaffirmed that "[m]andatory presumptions must be measured against the standards of *Winship* as elucidated in *Sandstrom*." *Id.* at 315. "Such presumptions violate the Due Process Clause if they relieve the State of the burden of persuasion on an element of an offense." *Id.*

Florida courts adhere to the same constitutional rule. See, e.g., *State v. Cohen*, 568 So. 2d 49, 52-53 (Fla. 1990) (holding that a statutory provision purporting to create an "affirmative defense" impermissibly shifted the burden of proof to the defendant, thereby "relieve[ing] the State of its obligation to prove the Defendant's guilt, beyond a reasonable doubt, of every element of the crime"). Thus, where a statutory scheme imposes upon a defendant the burden to disprove an element of the offense, the presumption of innocence is unconstitutional as applied in the proceedings conducted pursuant to § 318.14 requiring proof beyond a reasonable doubt.

B. Nature of Traffic Infraction Proceedings

In 1974, the Florida Legislature enacted Chapter 318 of the Florida Statutes, whereby it decriminalized most traffic infractions and redesignated them as civil "actions at law." *See Nettleton v. Doughtie*, 373 So. 2d 667 (Fla. 1979). The City argues that because of this reclassification, a red-light camera violation is not criminal in any respect but purely civil. Defendant contends, however, that notwithstanding the statutory label, traffic infraction proceedings remain quasi-criminal in nature and are therefore subject to the procedural due-process protections that apply in criminal cases. The Court agrees.

Although nominally civil, traffic infraction proceedings retain every substantive hallmark of a criminal prosecution. They are conducted in county court, styled as *State of Florida v. Defendant*, result in findings of "guilty" or "not guilty," and impose monetary penalties and other sanctions upon conviction. Convictions are reported to the Department of Highway Safety and Motor Vehicles and entered on the defendant's permanent driving record, and failure to pay or comply with the court's orders results in suspension of driving privileges. §§ 318.15, 322.27. Moreover, when a person elects to contest a traffic citation in court, "the commission of a charged

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infraction at a hearing under this chapter must be proved beyond a reasonable doubt." § 318.14(6), Fla. Stat.

Accordingly, while these offenses are labeled "civil," they remain fundamentally "quasi-criminal" in nature: punitive, adjudicative, and designed to vindicate the authority of the State rather than to compensate any private party. In *Hicks on Behalf of Feiock v. Feiock*, 485 U.S. 624, 631 (1988), the United States Supreme Court squarely addressed this distinction, holding that the applicability of constitutional due process protections turns not on legislative labels but on the *substance of the proceeding* and the *character of the relief imposed.* The Supreme Court explained that when a sanction is punitive, such as a fixed fine or jail term imposed to vindicate public authority, it is criminal in nature regardless of the State's characterization. *Id.* at 632. Only when a penalty is remedial or contingent, and designed to compel future compliance or compensate another party, may it properly be considered civil. *Id.* at 632-34. The Court further held that in any proceeding that is criminal or quasi-criminal in substance, the State may not employ presumptions or burden-shifting devices that relieve it of proving guilt beyond a reasonable doubt. *Id.* at 638.

Section 316.0083 operates precisely as a quasi-criminal enforcement mechanism: it accuses an individual of violating a state traffic law, imposes a fixed monetary penalty to vindicate public authority, and reports the conviction to the State's licensing agency. Under *Feiock*, such proceedings are sufficiently criminal in form and function to invoke the full protections of due process, including the requirement that every essential element of the alleged offense be proven beyond a reasonable doubt.

C. Elements of the Offense Under §§ 316.074, 316.075

The alleged violation in this case arises under sections 316.074(1) and 316.075(1)(c)1., which govern obedience to traffic-control devices and signals. Section 316.074(1) provides in relevant part that "the driver of any vehicle shall obey the instructions of any official traffic control device applicable thereto," subject to limited exceptions. Section 316.075(1) similarly provides that the colors displayed by traffic control signals "shall indicate and apply to drivers of vehicles and pedestrians as follows," and that a driver facing a steady red indication must stop before entering the intersection.

By their plain language, these statutes impose duties upon the *driver* of the vehicle, not upon the registered owner. The conduct that constitutes the infraction is the act of *driving* a motor vehicle through a red signal. Accordingly, in any proceeding governed by section 318.14(6), the government bears the burden of proving beyond a reasonable doubt each element of the alleged violation, including that the accused was in fact the driver of the vehicle at the time of the offense. *See In re Winship*, 397 U.S. 358 (1970).

The presumption of innocence therefore entitles the accused to be presumed *not* to have been the driver unless and until the State meets its burden of proving otherwise. Proof that a vehicle registered to the defendant was involved in the alleged infraction does not, standing alone, establish the essential element of operation. To adjudicate guilt based solely on ownership would relieve the government of its constitutional obligation to prove every fact necessary to constitute the offense beyond a reasonable doubt.

D. Section 316.0083's Burden-Shifting Mechanism.

Section 316.0083(1)(d) provides that "the owner of the motor vehicle involved in the violation is responsible and liable for paying the uniform traffic citation issued for a violation of s. 316.074(1) or s. 316.075(1)(c)1 when the driver failed to stop at a traffic signal, unless the owner can establish" one of several specified defenses. The statute further authorizes the owner to submit an affidavit identifying another individual who "leased, rented, or otherwise had care, custody, or control of the motor vehicle at the time of the alleged violation," and requires that the affidavit include the individual's name, address, date of birth, and, if known, driver-license number. Upon receipt of such an affidavit, the enforcing agency may issue a new notice of violation to the person so identified. § 316.0083(1)(d)1., 3., Fla. Stat.

This procedure operates as a mandatory rebuttable presumption. Once photographic evidence establishes that a particular vehicle was driven through a red light, the statute deems the registered owner "responsible and liable" unless that owner affirmatively proves another person's culpability by furnishing the required affidavit. The government is thus relieved of proving the essential fact that the accused actually drove the vehicle at the time of the offense. In effect, the burden of persuasion on that element shifts from the State to the defendant.

Such a burden-shifting presumption is constitutionally impermissible in a proceeding where guilt must be proved beyond a reasonable doubt. The United States Supreme Court has long held that due process forbids any statutory presumption that relieves the government of its burden to prove each element of an offense beyond a reasonable doubt. *See Sandstrom v. Montana*, 442 U.S. 510 (1979); *In re Winship*, 397 U.S. 358 (1970). The Florida Supreme Court has likewise made clear that a statute which requires the defendant to prove his innocence violates due process because it "would relieve the State of its obligation to prove the Defendant's guilt, beyond a reasonable doubt." *State v. Cohen*, 568 So. 2d 49, 52-53 (Fla. 1990).

By designating the vehicle's registered owner as presumptively responsible and placing upon that person the duty to produce affirmative proof of another's guilt, section 316.0083 inverts the constitutional order of proof. In proceedings where the legislature itself has prescribed the criminal standard of "beyond a reasonable doubt," this statutory presumption cannot be reconciled with the presumption of innocence guaranteed by due process.

E. Procedural versus Substantive Due Process

The City contends that section 316.0083 should be upheld under the principles of *substantive* due process because the statute concerns a regulatory matter, implicates no fundamental right, and need only satisfy rational-basis review. This argument misapprehends the nature of the Defendant's constitutional challenge.

The question presented here does not concern the policy wisdom of using automated enforcement systems or the State's general power to regulate roadway safety. Rather, it concerns the procedural fairness of adjudicating guilt under a statutory framework that shifts the burden of proof to the accused in a proceeding governed by the reasonable-doubt standard. The Due Process Clauses of both the United States and Florida Constitutions protect not only against arbitrary legislation but also against procedures that deprive an individual of life, liberty, or property without the safeguards of a fair adjudicative process. U.S. Const. amend. XIV; Art. I, § 9, Fla. Const.

Here, the alleged violation carries significant consequences: the imposition of monetary penalties, the potential suspension of driving privileges, and the permanent notation of an adjudication of guilt on the defendant's official driving record. These are concrete deprivations of property and liberty interests that may not be imposed except through procedures consistent with due process of law. Because section 318.14(6) expressly requires that guilt be proven beyond a reasonable doubt, the constitutional protections that accompany that standard necessarily apply.

Accordingly, the issue before the Court implicates procedural due process, not substantive due process. The statute's burden-shifting presumption cannot be justified by reference to rational-basis review, for the defect lies not in the Legislature's purpose, but in the unconstitutional method by which guilt is established.

F. Supporting Authorities

The reasoning of other courts confronted with similar automated

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enforcement schemes reinforces the conclusion that § 316.0083 violates procedural due process. In *Tupper v. City of St. Louis*, 468 S.W.3d 360 (Mo. 2015) (*en banc*), the Supreme Court of Missouri considered the constitutionality of a municipal red-light camera ordinance that, like Florida's, created a rebuttable presumption that the registered owner of a vehicle was the operator at the time of the violation. The ordinance authorized the city to issue citations based on photographic evidence showing a vehicle proceeding through an intersection after the signal turned red, and to establish the owner's liability unless the owner proved, by affidavit or testimony, that someone else had been driving.

The Missouri Supreme Court characterized the proceedings under that ordinance as "quasi-criminal" in nature, explaining that although the ordinance denominated the infraction as civil, it nevertheless mirrored the rules governing, criminal proceedings, used criminal procedural terms, imposed punitive sanctions, and imposed the same reasonable-doubt standard as here. *Id.* at 372. Because of those attributes, the court held that the constitutional protections governing criminal prosecutions apply in full. *Id.*

Applying these principles, the Missouri Supreme Court held that the ordinance impermissibly "shifts the burden of persuasion onto the defendant to prove that the defendant was not operating the motor vehicle at the time of the violation" in violation of due process. *Id.* at 365. Applying the same constitutional principles articulated in *Sandstrom v. Montana*, the court emphasized that due process forbids any statutory device that relieves the prosecution of its duty to prove every fact necessary to constitute the offense beyond a reasonable doubt. *Id.* at 370-71. Because the ordinance required the owner to "furnish satisfactory evidence" to rebut the presumption, rather than requiring the city to prove who was driving, it "relieve[d] the prosecution from proving an element of the violation charged beyond a reasonable doubt and [was] impermissible." *Id.* at 373.

The *Tupper* court's reasoning is directly applicable here. § 316.0083 creates a nearly identical presumption, making the registered owner "responsible and liable" for the violation unless she establishes that another person had "care, custody, or control" of the vehicle at the time. As in *Tupper*, this framework inverts the fundamental presumption of innocence and transfers to the defendant the burden of disproving an essential element of the offense—namely, operation of the vehicle in violation of sections 316.074(1) and 316.075(1)(c)1. The Missouri Supreme Court's holding accords with the principle that "criminal law regarding presumptions applies" in such quasi-criminal proceedings where guilt must be proven beyond a reasonable doubt. *Id.* at 372.

Accordingly, *Tupper* stands as persuasive authority for the proposition that a statutory scheme which presumes guilt based on vehicle ownership, and requires the accused to disprove it, violates the procedural protections guaranteed by the Due Process Clauses of both the United States and Florida Constitutions.

The Supreme Court of Minnesota reached a similar conclusion in *State v. Kuhlman*, 729 N.W.2d 577 (Minn. 2007), in striking down Minneapolis's red-light camera ordinance. Like Florida's statute, the Minneapolis ordinance-imposed liability on a vehicle's registered owner and created a rebuttable presumption that the owner was the driver unless the owner submitted an affidavit identifying another person. The court held that the ordinance conflicted with state law because it "eliminates the presumption of innocence and shifts the burden of proof from that required by the rules of criminal procedure." *Id.* at 584. The court further observed that, under Minnesota's traffic statutes, the State must prove beyond a reasonable doubt that the defendant was driving at the time of the violation, and that the owner has no obligation to prove anything." *Id.*

Although *Kuhlman* resolved the issue under principles of state law preemption, its reasoning on the due process implications of a mandatory rebuttable presumption is directly persuasive. As in *Kuhlman*, Florida's statutory scheme penalizes the vehicle's owner while presuming that the owner was the driver, thereby providing "less procedural protection" than is afforded under ordinary criminal proceedings. *Id.* The same constitutional infirmity arises here: by relieving the government of its burden to prove the essential element of operation beyond a reasonable doubt, section 316.0083 violates the procedural due-process protections guaranteed by both the United States and Florida Constitutions.

The city argues that these proceedings are not quasi-criminal. This court takes note that in these proceedings the action is the State of Florida vs the Defendant; the Defendant must enter a plea of guilty, not guilty, or no contest, is found guilty or not guilty, if guilty is sentenced, and the standard of proof is beyond a reasonable doubt. All indicia consistent with criminal prosecutions. Additionally, under the accident report privilege, the defendant's statements to police, even in non-criminal investigations, are privileged.

V. CONCLUSION

For the reasons set forth above, the Court concludes that these proceedings are quasi-criminal, and that Section 316.0083, Florida Statutes, as applied in these proceedings conducted pursuant to section 318.14, violates the procedural due process guarantees of the Fourteenth Amendment to the United States Constitution and Article I, section 9 of the Florida Constitution. In such proceedings, the statute's presumption that the registered owner of a motor vehicle is responsible for a red-light violation impermissibly shifts the burden of proof to the accused and relieves the government of its obligation to prove, beyond a reasonable doubt, every fact necessary to constitute the offense charged.

Accordingly, it is **ORDERED** and **ADJUDGED** that the Defendant's motion to dismiss is hereby **GRANTED**.

The Uniform Traffic Citation issued to Defendant, citation number ALY6VNE, is hereby **DISMISSED.**

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[1]Or submit an affidavit asserting one of the other four enumerated defenses set forth in § 316.0083(1)(d)1, none of which are material to Defendant's motion.

*   *   *

Insurance—Personal injury protection—Coverage—Medical expenses—Reimbursement—In calculating reimbursement of PIP benefits for CPT code 98960, insurer improperly used workers' compensation schedule rather than RVU formula established by CMS—No merit to argument that use of workers' compensation fee schedule is required because Medicare does not independently reimburse code 98960 since it is a "Status B" code that is always bundled into payment for other services where insurer is not making Medicare payment, and value of Medicare participating physicians fee schedule for that code can be calculated through basic arithmetic

CLEARCARE, LLC, a/a/o Aldo Martinez, Plaintiff, v. SECURITY NATIONAL INSURANCE COMPANY, Defendant. County Court, 17th Judicial Circuit in and for Broward County. Case No. COINX25009591. Division 73. October 2, 2025. Steven P. DeLuca, Judge. Counsel: Thomas J. Wenzel, Steinger, Greene & Feiner, Plantation, for Plaintiff.

ORDER ON SEPTEMBER 24, 2025 HEARING

THIS CAUSE having come before the court and the Court, based on the Court's order setting September 24, 2025 as a hearing date for all pending motions for summary judgment/disposition, having reviewed the motions and the court file, having heard argument of counsel, and being otherwise sufficiently advised in the premises, ORDERS AND ADJUDGES as follows:

Plaintiff filed the instant lawsuit, a single count action for declaratory relief, seeking the Court's interpretation of §627.736(5)(a)1.f., under the Court's equity powers and Ch. 86, Fla. Stat. The dispute at issue concerns formulas used to calculate the participating physician's

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fee schedule under Medicare which were previously addressed, albeit in a different context, in *Sunrise Chiropractic and Rehabilitation Center, Inc. (a/a/o Bichenet Louis) v. Security National Ins. Co.*, 321 So.3d 786 (Fla 4th DCA 2021) [46 Fla. L. Weekly D1150a]. Plaintiff seeks a ruling on the parties' rights and whether those so-called "RVU" formulas described in Sunrise Chiropractic extend to CPT Code 98960. The parties additionally filed a stipulation on June 17, 2025 and the Court agrees there are no facts in dispute.

It is undisputed that CPT Code 98960 has RVU values in the Medicare RVU files. Defendant contends that the RVU values are not indicative of compensability under Medicare and thus, it properly resorted to the workers' compensation fee schedule to reimburse this service. Plaintiff contends that the RVU values create a reimbursement amount for purposes of the PIP statute and Defendant wrongfully "skipped" to the workers' compensation fee schedule.

Additionally, this case was set before the Court at adjacent hearings with the case of *Clearcare LLC (Dorony Douse) v. Security National Insurance Company* (formerly named as Bristol West Insurance Company), COINX-25-009668 (73) [34 Fla. L. Weekly Supp. 44a]. The parties agreed that there was a similar dispute that could be addressed simultaneously by arguing a single time—namely, the legal dispute over the CPT 98960 adjustment. The parties agreed to adopt the same arguments for the legal issue concerning the CPT 98960 adjustment for both cases. There were slight differences, for example the *Dorony Douse* matter did have an additional issue (exhaustion), but for purposes of the legal question, the Court allowed the issue to be argued a single time.

Findings and Analysis

The parties agreed that the policy coverage for medical expenses is extended in accordance with the "schedule of maximum charges" found in §627.736(5)(a)1, Fla. Stat. Although it is referred to colloquially as the "fee schedules", subparagraph 1 is actually a series of methodologies applicable to different classes of medical providers. Some, like sub-subparagraph "a" are an exact replication of Medicare payments. Others, like sub-subparagraph "c" are only governed by "usual and customary charges".

As agreed in this case, the Plaintiff provider falls within the confines of sub-subparagraph "f". This sub-subparagraph, and providers falling within this applicable catchall class, are governed by several cross-references based on terms of art. This sub-subparagraph provides:

> 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).
>
> (II)edicare Part B, in the case of services, supplies, and care provided by ambulatory surgical centers and clinical laboratories.
>
> (III)he Durable Medical Equipment Prosthetics/Orthotics and Supplies fee schedule of Medicare Part B, in the case of durable medical equipment.
>
> **However, if such services, supplies, or care is not reimbursable under Medicare Part B, as provided in this sub-subparagraph, the insurer may limit reimbursement to 80 percent of the maximum reimbursable allowance under workers' compensation,** as determined under s. 440.13 and rules adopted thereunder which are in effect at the time such services, supplies, or care is provided. Services, supplies, or care that is not reimbursable under Medicare or workers' compensation is not required to be reimbursed by the insurer.
>
> §627.736(5)(a)1.f., Fla. Stat. (Emphasis added).

First, the court must address what is meant by "**[t]he participating physicians fee schedule of Medicare Part B**". The Court agrees with Plaintiff that this term of art is specifically given meaning in the *Sunrise Chiropractic* case:

> The "schedule of maximum charges" limits payment for the chiropractic services rendered by Plaintiff to "200 percent of the allowable amount under" the "participating physicians fee schedule of Medicare Part B." *See Fla. Stat. § 627.736(5)(a)*1.f.(I). In turn, the Medicare Part B Physicians Fee Schedule (the "Medicare Part B Physicians Fee Schedule" or "PPFS-MPB") prescribes the reimbursement rate for over 7,000 services performed by medical professionals, including the chiropractic medical services that are the subject of this case.
>
> The reimbursement value for services under the PPFS-MPB are calculated by multiplying (1) the relative value of a service; (2) the conversion factor for the particular year; and (3) the geographic adjustment factor applicable to the locality in which the service was provided. *See -42 U.S.C. § 1395w4(b)(1).* Therefore, using simple arithmetic (addition and multiplication), the reimbursement value for any service, in any part of the United States, for any given year can be easily ascertained by the Defendant using the Medicare Part B Physicians Fee Schedule. The tables of values for the cost factors are published each year in the annual Medicare Physicians Fee Schedule Final Rule and are readily available and easily accessible on the Centers for Medicare and Medicaid ("CMS") website.

Sunrise Chiropractic at 788. So, based on the foregoing CPT 98960 clearly has a reimbursement value as defined in sub-subparagraph "f". Defendant argues that the *Sunrise Chiropractic* decision should be narrowly read to only apply the RVU formula to codes that are compensable under Medicare, and specifically, the codes Medicare provided a 2% reduction based on the study. The Court disagrees. Although *Sunrise Chiropractic* addressed a 2% issue, there's nothing in this decision that would limit the Court's defining of the "PPFS-MPB" or explanation of relative value computation for purposes of consideration of this statutory "term of art" cross-reference.

Defendant, in response, makes several arguments contending that although RVU values are provided for CPT 98960, the RVU files specifically denote CPT Code 98960 RVUs as "Not Used For Medicare Payment" since this code is a "Status B" code. Defendant contends that the Medicare Processing Manual, which defines Status B codes as covered services that are always bundled into payment for other services, further support that Medicare does not independently reimburse this code. . Lastly, Defendant walked the Court through the Medicare Physician Fee Schedule payment files from CMS to demonstrate that CPT 98960 is not found in the payment files.

Plaintiff raises several arguments, procedural and substantive, as to why Defendant cannot disregard the RVU values in this case including the fact that Defendant's conclusion on "Status B" codes is not supported in the record where the Medicare Reimbursement manual relied on by Defendant provides that only "Status N" codes denote noncovered services. Plaintiff also stresses that Defendant is not making "Medicare payments" and that Defendant is not issuing payments as a direct mirror to Medicare (which is reserved only for providers listed under §627.736(5)(a)1.a.). Additionally, Plaintiff contends on this individual case that Defendant cannot even reach the issue by virtue of its untimely filing of factual support in response to Plaintiff's summary judgment motion. *See Lloyd S. Meisels, P.A. v. Dobrofsky*, 341 So.3d 1131 (Fla. 4th DCA 2022) [47 Fla. L. Weekly D1239a]. Plaintiff also highlights the several cases which have resolved in its favor on this matter which Plaintiff filed as supplemental authority.

The Court finds Plaintiff's arguments persuasive, but also finds that it need not reach many of these arguments for two reasons. First, the definition and calculation for "the participating physicians fee schedule of Medicare Part B" has been addressed by the Fourth District Court of Appeals in *Sunrise Chiropractic*. Although Defendant did raise the issue that the *Sunrise Chiropractic* decision was not

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contested by the insurer in that matter, in reviewing the decision the Court does find that the insurer did contest one of the underlying authoritative decisions authored by Judge Dimitrouleas. *See* Coastal Wellness Ctrs., Inc. v. Progressive Am. Ins. Co., 309 F. Supp. 3d 1216, 1221 (S.D. Fla. 2018). Like the 4th DCA, Judge Dimitrouleas explained that reliance on the payment files is erroneous with respect to this statutory cross reference to the "PPFS-MPB". The 4th DCA and Judge Dimitrouleas both made clear that for purposes of calculating the "PPFS-MPB", an interested party need just perform the basic arithmetic by inserting the RVU and GPCI values and multiplying by the conversion factor as explained in the respective decisions.

Defendant's arguments also rely on extraneous materials outside of sub-subparagraph §627.736(5)(a)1.f., Fla. Stat. (Emphasis added) contrary to the statutory language. The Court finds that, within the confines of the provisions of sub-subparagraph "f", CPT Code 98960 is reimbursable under the "PPFS-MPB" by virtue of the RVU values and ability to input those values into the aforementioned formula.

Thus the Court agrees that "[t]he participating physicians fee schedule of Medicare Part B" is governed by the RVU files. The Court agrees that 98960 has RVU values and that Defendant's "skip" to the workers' compensation fee schedule was incorrect under the facts herein.

Accordingly, based on the foregoing, the Court ORDERS AND ADJUDGES as follows:

1. Plaintiff's motion for final summary judgment is GRANTED.
2. Defendant's motions for summary judgment are DENIED.
3. Plaintiff shall submit a final judgment to the Court.

* * *

Insurance—Personal injury protection—Coverage—Deductible—Exhaustion of policy limits—Based on technical admissions and insurer's failure to respond to medical provider's motion for summary judgment, court finds in provider's favor on issues regarding existence and applicability of deductible, invalidity of exhaustion defense, and insurer's absence of good faith in claims handling—Insurer's argument in favor of setting aside technical admissions is based on case law that predates amendments to rule 1.510 and ignores fact that failure to respond to motion for summary judgment would lead to same result even absent technical admissions

CLEARCARE LLC, a/a/o Deidre Henderson, Plaintiff, v. GEICO GENERAL INSURANCE COMPANY, Defendant. County Court, 17th Judicial Circuit in and for Broward County. Case No. COINX22078578. Division 62. February 23, 2024. Terri-Ann Miller, Judge. Counsel: Thomas J. Wenzel, Steinger, Greene & Feiner, Plantation, for Plaintiff.

ORDER ON PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT

THIS CAUSE having come before the court and the Court, having reviewed the motions and the court file, having heard argument of counsel, and being otherwise sufficiently advised in the premises, the Court finds as follows:

Background

The instant case concerns whether the subject GEICO policy contains a deductible. Defendant raised an affirmative defense alleging that Plaintiff's claim was properly applied to a policy deductible and, thus, Plaintiff is entitled to no money for the claim. Plaintiff later filed an amended complaint challenging the existence of the deductible. It's Plaintiff's position that had there been no deductible, Defendant improperly adjusted Plaintiff's claim.

After Defendant filed its answer, Plaintiff submitted several discovery requests to defendant. Included among the discovery requests sent to Defendant were two sets of supplemental requests for admissions: one addressing the purported existence of a deducible and the other addressing Defendant's allegations concerning exhaustion. Because Defendant did not respond to the supplemental request for admissions within the timeframe allotted by Fla. R. Civ. P. 1.370, the admission were deemed admitted on August 18, 2023.

Relying on these "technical admissions", Plaintiff filed a motion for summary judgment on November 2, 2023. Plaintiff's motion alleges that the issues technically admitted by virtue of Rule 1.370 were uncontested. The Court set the Plaintiff's motion for summary judgment following issuance of an order to show cause and case management. The time affixed for hearing was February 15, 2024. Defendant never responded to Plaintiff's motion for summary judgment. Roughly sixteen (16) days prior to the time fixed for the summary judgment hearing, Defendant responded to one of the supplemental requests for admissions (concerning deductible). Two days prior to the hearing, Defendant filed a response to the other of Plaintiff's supplemental requests for admissions and filed a request for relief from technical admissions.

Findings of the Court:

Under the newly amended summary judgment rule, "[a]t least 20 days before the time fixed for the hearing, the nonmovant must serve a response that includes the nonmovant's supporting factual position. . ." Courts have found this requirement *mandatory.* The Fourth District Court of Appeal has explained this requirement in harsh terms, stating: "[w]ithout filing a response, a nonmoving party pursues a risky course by waving at the record, leaving the trial court to mine for nuggets of triable fact that would preclude summary judgment." *Lloyd S. Meisels, P.A. v. Dobrofsky*, 341 So.3d 1131 (Fla. 4th DCA 2022) [47 Fla. L. Weekly D1239a].

Here, the Court, exercising its discretion, will treat Plaintiff's motion unopposed and will find in Plaintiff's favor on every issue technically admitted by violation of Rule 1.370. These include, but are not limited to, the facts that: Defendant is unable to prove the existence of a policy deductible, Defendant is unable to prove that a deductible can apply to Deidre Henderson on this claim, that reasonableness is exclusively limited under the policy to the fee schedule pursuant to §627.736(5)(a)1, and that Defendant lacked good faith claims handling in adjusting Plaintiff's claim.

Defendant cites numerous cases concerning the setting aside of technical admissions. However, there are several problems with Defendant's position as applied in this case. First, the case law cited by Defendant predates the amendments to Rule 1.510 and the current mindset of strict adherence to case deadlines. Second, and most importantly, Defendant did not file a response to the summary judgment motion as required. Without a response to the summary judgment motion, the Court still would arrive at the same result even if the Court *were* to set aside the technical admissions. Without a response, this Court has discretion to treat the motion unopposed and, as previously explained, will do so here. Additionally, a nonmovant merely citing its denials of request for admissions would not constitute counter-evidence sufficient to discharge the nonmovant's burden under Rule 1.510(c)(5).

Therefore, the Court ORDERS AND ADJUDGES as follows:

1. Plaintiff's motion is **GRANTED**.

2. Plaintiff has conclusively established that no deductible applies to the claim at issue and finds against Defendant's second affirmative defense.

3. Plaintiff has conclusively established the invalidity of Defendant's third affirmative defense (exhaustion of benefits) and the Court finds that there are sufficient benefits available under the claim to issue a curative adjustment to Plaintiff's claim.

4. The sole remaining issue for the Court's determination is the reasonable amount of benefits to be awarded to Plaintiff. The Court will remain mindful of the conclusively established fact that benefits will strictly be paid at the amount dictated by

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§627.736(5)(a)1 as admitted by Defendant and established in this summary judgment motion.

* * *

Insurance—Personal injury protection—Coverage—Medical expenses—Reimbursement—In calculating reimbursement of PIP benefits for CPT code 98960, insurer improperly used workers' compensation schedule rather than RVU formula established by CMS

CLEARCARE LLC, a/a/o Oladidipo Ayeni, Plaintiff, v. SECURITY NATIONAL INSURANCE COMPANY, Defendant. County Court, 17th Judicial Circuit in and for Broward County. Case No. COINX25010129. Division 83. February 13, 2026. Ellen Feld, Judge. Counsel: Thomas J. Wenzel, Steigner, Greene & Feiner, Plantation, for Plaintiff.

ORDER GRANTING PETITIONER'S MOTION FOR FINAL SUMMARY JUDGMENT

THIS CAUSE having come before the court on February 11, 2026, and the Court, having reviewed the motions and the court file, having reviewed the applicable rules of civil procedure, having heard argument of counsel, and being otherwise sufficiently advised in the premises, ORDERS AND ADJUDGES as follows:

Background and Issue

Petitioner filed the instant lawsuit, a single count action for declaratory relief, seeking the Court's interpretation of §627.736(5)(a)1.f., under the Court's equity powers and Ch. 86, Fla. Stat. The dispute at issue concerns formulas used to calculate the participating physician's fee schedule under Medicare which were previously addressed, albeit in a different context, in *Sunrise Chiropractic and Rehabilitation Center, Inc. (a/a/o Bichenet Louis) v. Security National Ins. Co.*, 321 So.3d 786 (Fla 4th DCA 2021) [46 Fla. L. Weekly D1150a]. Petitioner seeks a ruling on the parties' rights and whether those so-called "RVU" formulas described in *Sunrise Chiropractic* extend to CPT Code 98960.

It is undisputed that the Medicare RVU files contain values for CPT Code 98960. However, Respondent contends that it need not honor the RVU values due to the nature of this service as a "status B" code and, instead, can find that 98960 is not reimbursable by Medicare and that it must resort to the workers' compensation fee schedule to govern adjustment of this service. Petitioner contends that the RVU values create a reimbursement amount *for purposes of the PIP statute* and Respondent wrongfully applied the workers' compensation fee schedule.

Petitioner filed its motion for summary judgment. Respondent filed cross-motion for summary judgment. Each party responded to its opposing party's summary judgment motion.

Findings and Analysis

The parties agreed that the policy coverage for medical expenses is extended in accordance with the "schedule of maximum charges" found in §627.736(5)(a)1, Fla. Stat.

This sub-subparagraph provides:

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).

(II)Medicare Part B, in the case of services, supplies, and care provided by ambulatory surgical centers and clinical laboratories.

(III)he Durable Medical Equipment Prosthetics/Orthotics and Supplies fee schedule of Medicare Part B, in the case of durable medical equipment.

However, if such services, supplies, or care is not reimbursable under Medicare Part B, as provided in this sub-subparagraph, the insurer may limit reimbursement to 80 percent of the maximum reimbursable allowance under workers' compensation, as determined under s. 440.13 and rules adopted thereunder which are in effect at the time such services, supplies, or care is provided. Services, supplies, or care that is not reimbursable under Medicare or workers' compensation is not required to be reimbursed by the insurer.

§627.736(5)(a)1.f., Fla. Stat. (Emphasis added).

The issue at bar what is meant by "**[t]he participating physicians fee schedule of Medicare Part B**". The Court in the *Sunrise Chiropractic* case addressed this issue as follows:

> The "schedule of maximum charges" limits payment for the chiropractic services rendered by Plaintiff to "200 percent of the allowable amount under" the "participating physicians fee schedule of Medicare Part B." *See Fla. Stat. § 627.736(5)(a)*1.f.(I). In turn, the Medicare Part B Physicians Fee Schedule (the "Medicare Part B Physicians Fee Schedule" or "PPFS—MPB") prescribes the reimbursement rate for over 7,000 services performed by medical professionals, including the chiropractic medical services that are the subject of this case.
>
> The reimbursement value for services under the PPFS—MPB are calculated by multiplying (1) the relative value of a service; (2) the conversion factor for the particular year; and (3) the geographic adjustment factor applicable to the locality in which the service was provided. *See—42 U.S.C. § 1395w4(b)(1).* Therefore, using simple arithmetic (addition and multiplication), the reimbursement value for any service, in any part of the United States, for any given year can be easily ascertained by the Defendant using the Medicare Part B Physicians Fee Schedule. The tables of values for the cost factors are published each year in the annual Medicare Physicians Fee Schedule Final Rule and are readily available and easily accessible on the Centers for Medicare and Medicaid ("CMS") website.

Sunrise Chiropractic at 788.

Sunrise Chiropractic explains that the RVU formula is used to calculate "the reimbursement value for *any* service, in *any* part of the United States, for *any* given year" and further explains ties these calculations to the reimbursement rate for over 7,000 services (many of which were never subject to the "2% issue"). Therefore, the Court finds that, although *Sunrise Chiropractic*, addressed a 2% issue, there's nothing in this decision that would limit the Court's defining of the "PPFS—MPB" or computation of the values under this term of art cross-reference. Accordingly, the court finds that CPT 98960 has a reimbursement value as defined in sub-subparagraph "f".

Accordingly, based on the foregoing, the Court ORDERS AND ADJUDGES as follows:

1. Petitioner's motion for summary judgment on the 98960 issue is GRANTED.

2. Finding no other issues pending in this case, the Court finds that Petitioner is entitled to Final Judgment in its favor. Petitioner shall upload a final judgment on its request for declaratory relie within 10 days of the date of this order. Failure to do so shall result in a dismissal absent a showing of good cause.

* * *

Insurance—Personal injury protection—Coverage—Medical expenses—Reimbursement—In calculating reimbursement of PIP benefits for CPT Code 98960, insurer improperly used workers' compensation schedule rather than RVU formula established by CMS—No merit to argument that use of workers' compensation fee schedule is required because Medicare does not independently reimburse code 98960 since it is a "Status B" code that is always bundled into payment for other services where insurer is not making Medicare payment, and value of Medicare participating physicians fee schedule for that code can be calculated through basic arithmetic—Exhaustion of policy limits—Fact that insurer claims no further relief could be awarded due to exhaustion of benefits does not preclude entry of declaratory judgment regarding correct manner of reimbursement

CLEARCARE LLC, a/a/o Dorony Douse, Plaintiff, v. SECURITY NATIONAL INSURANCE COMPANY, Defendant. County Court, 17th Judicial Circuit in and for Broward County. Case No. COINX25009668. Division 73. October 17, 2025. Steven

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P. DeLuca, Judge. Counsel: Thomas J. Wenzel, Steinger, Greene & Feiner, Plantation, for Plaintiff.

ORDER ON SEPTEMBER 24, 2025 HEARING

THIS CAUSE having come before the court and the Court, based on the Court's order setting September 24, 2025 as a hearing date for all pending motions for summary judgment/disposition, having reviewed the motions and the court file, having heard argument of counsel, and being otherwise sufficiently advised in the premises, the Court finds as follows:

Plaintiff filed the instant lawsuit, a single count action for declaratory relief, seeking the Court's interpretation of §627.736(5)(a)1.f., under the Court's equity powers and Ch. 86, Fla. Stat. The dispute at issue concerns formulas used to calculate the participating physician's fee schedule under Medicare which were previously addressed, albeit in a different context, in *Sunrise Chiropractic and Rehabilitation Center, Inc. (a/a/o Bichenet Louis) v. Security National Ins. Co.*, 321 So.3d 786 (Fla. 4th DCA 2021) [46 Fla. L. Weekly D1150a]. Plaintiff seeks a ruling on the parties' rights and whether those so-called "RVU" formulas described in *Sunrise Chiropractic* extend to CPT Code 98960. The parties additionally filed a stipulation on August 4, 2025 ensuring the dispute was narrowed.

It is undisputed that CPT Code 98960 has RVU values in the Medicare RVU files. Defendant contends that it need not honor the RVU values and, instead, can find that 98960 is not covered by Medicare and must resort to the workers' compensation fee schedule to govern this service. Plaintiff contends that the RVU values create a reimbursement amount for purposes of the PIP statute and Defendant wrongfully "skipped" to the workers' compensation fee schedule.

The parties filed various motions for summary judgment some were no longer necessary due to the stipulation and others were abandoned. As germane to this hearing, Plaintiff filed its motion for final summary judgment on April 10, 2025 addressing its entitlement to the declaration it sought regarding CPT 98960. Defendant filed its response to Plaintiff's motion for final summary judgment and its cross motion for summary judgment on June 11, 2025 outside the time constraints of Fla. R. Civ. P. 1.510(c). Defendant's motion addressed only the 98960 issue. Plaintiff filed a motion for summary judgment concerning its allegation that benefits were not exhausted on May 2, 2025. Defendant filed a memorandum of law in opposition to Plaintiff's exhaustion motion within the time constraints of Fla. R. Civ. P. 1.510(c), but didn't file factual support for its position until July 31, 2025 which was after the deadline under amended Fla. R. Civ. P. 1.510(c).

Additionally, this case was set before the Court at adjacent hearings with the case of *Clearcare LLC (Aldo Martinez) v. Security National Insurance Company*, COINX-25-009591 (73) [34 Fla. L. Weekly Supp. 41a]. The parties agreed that there was a similar dispute that could be addressed simultaneously by arguing a single time—namely, the legal dispute over the CPT 98960 adjustment. The parties agreed to adopt the same arguments for the legal issue concerning the CPT 98960 adjustment for both cases. There were slight differences, for example this case did have an additional issue (exhaustion) which needed to be addressed, but for purposes of the legal question pertaining to CPT 98960, the Court allowed the issue to be argued a single time.

Findings and Analysis

The 98960 RVU Issue

The parties agreed that the policy coverage for medical expenses is extended in accordance with the "schedule of maximum charges" found in §627.736(5)(a)1, Fla. Stat. Although it is referred to colloquially as the "fee schedules", subparagraph 1 is actually a series of methodologies applicable to different classes of medical providers. Some, like sub-subparagraph "a" are an exact replication of Medicare payments. Others, like sub-subparagraph "c" are only governed by "usual and customary charges".

As agreed in this case, the Plaintiff provider falls within the confines of sub-subparagraph "f". This sub-subparagraph, and providers falling within this applicable catchall class, are governed by several cross-references based on terms of art. This sub-subparagraph provides:

> 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).
>
> (II)edicare Part B, in the case of services, supplies, and care provided by ambulatory surgical centers and clinical laboratories.
>
> (III)he Durable Medical Equipment Prosthetics/Orthotics and Supplies fee schedule of Medicare Part B, in the case of durable medical equipment.
>
> **However, if such services, supplies, or care is not reimbursable under Medicare Part B, as provided in this sub-subparagraph, the insurer may limit reimbursement to 80 percent of the maximum reimbursable allowance under workers' compensation,** as determined under s. 440.13 and rules adopted thereunder which are in effect at the time such services, supplies, or care is provided. Services, supplies, or care that is not reimbursable under Medicare or workers' compensation is not required to be reimbursed by the insurer.

§627.736(5)(a)1.f., Fla. Stat. (Emphasis added).

First, the court must address what is meant by "**[t]he participating physicians fee schedule of Medicare Part B**". The Court agrees with Plaintiff that this term of art is specifically given meaning in the *Sunrise Chiropractic* case:

> The "schedule of maximum charges" limits payment for the chiropractic services rendered by Plaintiff to "200 percent of the allowable amount under" the "participating physicians fee schedule of Medicare Part B." *See Fla. Stat. § 627.736(5)(a)*1.f.(I). In turn, the Medicare Part B Physicians Fee Schedule (the "Medicare Part B Physicians Fee Schedule" or "PPFS—MPB") prescribes the reimbursement rate for over 7,000 services performed by medical professionals, including the chiropractic medical services that are the subject of this case.
>
> The reimbursement value for services under the PPFS—MPB are calculated by multiplying (1) the relative value of a service; (2) the conversion factor for the particular year; and (3) the geographic adjustment factor applicable to the locality in which the service was provided. *See —42 U.S.C. § 1395w4(b)(1).* Therefore, using simple arithmetic (addition and multiplication), the reimbursement value for any service, in any part of the United States, for any given year can be easily ascertained by the Defendant using the Medicare Part B Physicians Fee Schedule. The tables of values for the cost factors are published each year in the annual Medicare Physicians Fee Schedule Final Rule and are readily available and easily accessible on the Centers for Medicare and Medicaid ("CMS") website.

Sunrise Chiropractic at 788. So, based on the foregoing CPT 98960 clearly has a reimbursement value as defined within the confines of sub-subparagraph "f". Defendant argues that the *Sunrise Chiropractic* decision should be narrowly read to only address the 2% issue. The Court disagrees. Although *Sunrise Chiropractic* addressed a 2% issue, there's nothing in this decision that would limit the Court's defining of the "PPFS—MPB" or explanation of relative value computation for purposes of consideration of this statutory "term of art" cross-reference.

Defendant, in response, makes several arguments contending that although RVU values are provided for CPT 98960, they can ignore those because this code is a "Status B" code. Defendant contends that

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the *Sunrise Chiropractic* decision should be limited to only the 2% issue and highlights that the insurer did not participate in that appeal. Defendant also walked the Court through the CMS payment files demonstrating that CPT 98960 is not found in the payment files.

Plaintiff raises several arguments, procedural and substantive, as to why Defendant cannot disregard the RVU values in this case including the fact that Defendant's conclusion on "Status B" codes is not supported in the record where the Medicare Reimbursement manual relied on by Defendant provides that only "Status N" codes denote noncovered services. Plaintiff also stresses that Defendant is not making "Medicare payments" and that Defendant is not issuing payments as a direct mirror to Medicare (which is reserved only for providers listed under §627.736(5)(a)1.a.). Plaintiff also highlights the several cases which have resolved in its favor on this matter which Plaintiff filed as supplemental authority.

The Court finds Plaintiff's arguments persuasive, but also finds that it need not reach many of these arguments for two reasons. First, the definition and calculation for "the participating physicians fee schedule of Medicare Part B" has been addressed by the Fourth District Court of Appeals in *Sunrise Chiropractic*. Although Defendant did raise the issue that the *Sunrise Chiropractic* decision was not contested by the insurer in that matter, in reviewing the decision the Court does find that the insurer did contest one of the underlying authoritative decisions authored by Judge Dimitrouleas. *See Coastal Wellness Ctrs., Inc. v. Progressive Am. Ins. Co., 309 F. Supp. 3d 1216, 1221 (S.D. Fla. 2018).* Like the 4th DCA, Judge Dimitrouleas explained that reliance on the payment files is erroneous with respect to this statutory cross reference to the "PPFS-MPB". The 4th DCA and Judge Dimitrouleas both made clear that for purposes of calculating the "PPFS-MPB", an interested party need just perform the basic arithmetic by inserting the RVU and GPCI values and multiplying by the conversion factor as explained in the respective decisions.

Defendant's arguments also rely on extraneous materials outside of sub-subparagraph §627.736(5)(a)1.f., Fla. Stat. (Emphasis added) contrary to the statutory language. The Court finds that, within the confines of the provisions of sub-subparagraph "f", CPT Code 98960 is reimbursable under the "PPFS-MPB" by virtue of the RVU values and ability to input those values into the aforementioned formula.

Thus the Court agrees that "[t]he participating physicians fee schedule of Medicare Part B" is governed by the RVU files. The Court agrees that 98960 has RVU values and that Defendant's "skip" to the workers' compensation fee schedule was incorrect under the facts herein.

<u>Exhaustion</u>

Also under consideration were the various motions concerning exhaustion of benefits. Plaintiff made two separate contentions as to why the issue of exhaustion could not stand in the way of the petition to which Plaintiff was otherwise entitled. First, Plaintiff argues that this particular action is a single-count action for declaratory relief and pursuant to §86.011, Fla. Stat. the Court is empowered to award declaratory judgment "whether or not further relief is or could be claimed". In support of this petition, Plaintiff filed numerous decisions in support of this position.

Second, Plaintiff contended that the Court could find for Plaintiff on the merits of the exhaustion issue based on amended Rule 1.510(c). Plaintiff argues that the fact that Defendant failed to timely respond to two motions for summary judgment filed by Plaintiff gives the Court discretion to find in Plaintiff's favor. Plaintiff's first motion was filed on April 10, 2025 and alleged entitlement to final summary judgment. The Court agrees that Defendant did not timely respond to this motion as June 11 is outside of the time constraints set by Rule 1.510(c). Defendant's response also makes no mention concerning exhaustion. Plaintiff's second motion, filed on May 2, 2025, directly attacked the merits of Defendant's exhaustion claim. Defendant filed a memorandum of law in opposition to Plaintiff's May 2 exhaustion motion, but failed to file factual support until July 31 which the Court also agrees was untimely.

For its part, Defendant receded from its motion for summary judgment on exhaustion and wanted to address the issue of whether the concept of exhaustion could stand in the way of an otherwise awardable petition for declaratory relief. Defendant cited a handful of cases primarily focusing on *Merle Wood & Assocs., Inc. v. Intervest-Quay Ltd. P'ship*, 877 So.2d 942 (Fla. 4th DCA 2004) [29 Fla. L. Weekly D1726b] (regarding the contractual void between parties to a contract and those who will never be parties); *A&M Gerber Chiropractic LLC v. GEICO Gen. Ins. Co.*, 925 F.3d 1205 (11th Cir. 2019) [27 Fla. L. Weekly Fed. C2031a] (regarding standing); and *United Auto. Ins. Co. v. Buchalter*, 344 So.3d 474 (Fla. 4th DCA 2022) [47 Fla. L. Weekly D1629a] (regarding the "one cause of action" issue).

Plaintiff distinguishes Defendant's cases, for example, explaining that the *Buchalter* case involved an inapposite issue of seeking damages for various statutory violations which is not an issue in this case (on a complaint for declaratory relief that seeks no damages). The Defendant should also be commended as it provided, in candor, an admission that the *Gerber* decision is based on Article III standing and not standing under Ch. 86, Fla. Stat.

In the end, the Court agrees with Plaintiff. Plaintiff is entitled the declaration is seeks. The Court agrees that §86.011 does not preclude a declaration based on Defendant's position that no further relief could be claimed due to exhaustion. Even if §86.011 didn't preclude such a position, under the facts and background of this case, the Court would still arrive at the same conclusion. *See Lloyd S. Meisels, P.A. v. Dobrofsky*, 341 So.3d 1131 (Fla. 4th DCA 2022) [47 Fla. L. Weekly D1239a].

Accordingly, based on the foregoing, the Court ORDERS AND ADJUDGES as follows:

1. Plaintiff's motions for summary judgment are GRANTED.
2. Defendant's motions for summary judgment are DENIED.
3. The Court grants Plaintiff's request for judgment on the pleadings and denies Defendant's cross-motion for judgment on the pleadings.
4. Based on these rulings, final summary judgment is granted in Plaintiff's favor. As such, Plaintiff shall submit a final judgment to the Court.

* * *

Insurance—Personal injury protection—Coverage—Medical expenses—Reimbursement—In calculating reimbursement of PIP benefits for CPT code 97010, insurer improperly used workers' compensation schedule rather than RVU formula established by CMS—Issue of existence of RVU values for code 97010 is not properly disputed where insurer did not raise issue in its cross-motion for summary judgment or response to medical provider's summary judgment motion—Moreover, RVU values for that code are accessible on CMS website

TOTAL HEALTH ASSOCIATES, LLC, Plaintiff, v. SAFECO INSURANCE COMPANY OF ILLINOIS, Defendant. County Court, 17th Judicial Circuit in and for Broward County. Case No. COINX25003794. Division 72. January 22, 2026. John Hurley, Judge. Counsel: Thomas J. Wenzel, Steinger, Greene & Feiner, Plantation, for Plaintiff.

<u>ORDER GRANTING SUMMARY JUDGMENT FOR PLAINTIFF REGARDING ADJUSTMENT OF CPT CODE 97010 AND DENYING DEFENDANT'S MOTION FOR SUMMARY JUDGMENT REGARDING CPT CODE 97010</u>

THIS MATTER came before the Court upon the parties' cross-motions for summary judgment. The Court, having reviewed the

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motions and the court file, having heard the arguments of counsel on January 13, 2026, and being otherwise duly advised in the premises, hereby **ORDERS AND ADJUDGES** as follows:

1. Plaintiff initiated this action seeking declaratory relief pursuant to Chapter 86, Florida Statutes, and the equitable jurisdiction of this Court. The dispute centers on the interpretation of section 627.736(5)(a)1.f., Florida Statutes, particularly as it relates to the application of the Participating Physician's Fee Schedule under Medicare Part B ("PPFS-MPB") and the methodology for calculating reimbursement adjustments thereunder.

2. These issues were previously addressed, albeit in a different context, by the Fourth District Court of Appeal in *Sunrise Chiropractic and Rehabilitation Center, Inc. a/a/o Bichenet Louis v. Security National Insurance Co.*, 321 So. 3d 786 (Fla. 4th DCA 2021) [46 Fla. L. Weekly D1150a]. Plaintiff now seeks a determination as to whether the RVU-based formulas discussed in *Sunrise Chiropractic* apply to CPT Code 97010 in the present dispute with Defendant.

3. Plaintiff filed its motion for summary judgment on July 14, 2025. Defendant filed its cross-motion on August 14, 2025.

4. Plaintiff contends that CPT Code 97010 is assigned RVU values within the Medicare RVU files and, accordingly, that the "schedule of maximum charges" cap under section 627.736(5)(a)1.f. should be calculated as 200 percent of the rate derived by applying those RVU values through the formula articulated in *Sunrise Chiropractic*.

5. Defendant, by contrast, limited reimbursement for CPT Code 97010 to the Workers' Compensation fee schedule rate. Defendant further argues that, under *MRI Associates of Tampa, Inc. v. State Farm Mutual Automobile Insurance Co.*, 334 So. 3d 577 (Fla. 2021) [46 Fla. L. Weekly S379a], insurers are not subject to mandatory payment obligations, and that *Allstate Indemnity Co. v. Gady Abramson, D.C., P.A.*, 403 So. 3d 1021 (Fla. 3d DCA 2024) [49 Fla. L. Weekly D2437a], may support its position.

6. At the hearing, Defendant asserted that CPT Code 97010 lacks RVU values, does not appear on the published Medicare fee schedule, and that Plaintiff improperly relies on extrinsic materials.

7. Plaintiff responds that certain factual assertions raised by Defendant should be barred, as they were not included in Defendant's cross-motion or response. *See Lloyd S. Meisels, P.A. v. Dobrofsky*, 341 So. 3d 1131 (Fla. 4th DCA 2022) [47 Fla. L. Weekly D1239a]. Plaintiff further notes that Defendant raised additional arguments in its December motion for summary judgment concerning an affirmative defense, but that motion was not noticed for hearing on the date at issue.

8. The Court finds that the matters raised in the cross-motions present pure questions of law, with no genuine disputes of material fact. Summary judgment is therefore appropriate.

9. It is undisputed that Defendant's policy incorporates the "schedule of maximum charges" provision set forth in section 627.736(5)(a)1, Florida Statutes. Although commonly referred to as the "fee schedules," subparagraph 1 encompasses a series of distinct reimbursement methodologies applicable to various categories of medical providers. Some, such as sub-subparagraph a., replicate Medicare payment rates precisely. Others, such as sub-subparagraph c., are governed by "usual and customary charges."

10. Plaintiff falls within the scope of sub-subparagraph f., which governs a residual category of providers and incorporates several defined terms of art. That provision states:

> f. For all other medical services, supplies, and care, 200 percent of the allowable amount under:
>
> a.The participating physicians fee schedule of Medicare Part B, except as provided in sub-sub-subparagraphs b. and c.
>
> b.Medicare Part B, in the case of services, supplies, and care provided by ambulatory surgical centers and clinical laboratories.
>
> c.The Durable Medical Equipment Prosthetics/Orthotics and Supplies fee schedule of Medicare Part B, in the case of durable medical equipment.

However, if such services, supplies, or care is not reimbursable under Medicare Part B, as provided in this sub-subparagraph, the insurer may limit reimbursement to 80 percent of the maximum reimbursable allowance under workers' compensation, as determined under section 440.13 and rules adopted thereunder which are in effect at the time such services, supplies, or care is provided. Services, supplies, or care that is not reimbursable under Medicare or workers' compensation is not required to be reimbursed by the insurer.

11. The Court must first determine the meaning of the phrase "the participating physicians fee schedule of Medicare Part B." The Court concurs with the interpretation set forth in *Sunrise Chiropractic*, which defines this term of art and explains its application.

12. In *Sunrise Chiropractic*, the Fourth District held that the "schedule of maximum charges" limits payment for chiropractic services to "200 percent of the allowable amount under" the PPFS-MPB. The PPFS-MPB prescribes reimbursement rates for over 7,000 services rendered by medical professionals, including chiropractic services. The reimbursement value for any such service is calculated by multiplying:

> a.the relative value unit (RVU) assigned to the service;
>
> b.the applicable conversion factor for the relevant year; and
>
> c.the geographic adjustment factor for the locality in which the service was rendered.

See 42 U.S.C. § 1395w-4(b)(1).

13. These values are published annually in the Medicare Physicians Fee Schedule Final Rule and are publicly accessible on the Centers for Medicare and Medicaid Services (CMS) website. *Sunrise Chiropractic*, at 788.

14. Based on the foregoing, the Court finds that CPT Code 97010 possesses a reimbursement value as contemplated by sub-subparagraph f. The Court agrees with Plaintiff, that the reasoning in *Sunrise Chiropractic* applies to the present dispute, including the appellate court's definition of the PPFS-MPB and the methodology for calculating reimbursement under that schedule.

15. The Court finds no language in *Sunrise Chiropractic* that would limit its holding to the specific two percent reduction issue addressed therein. Rather, the court's broad language confirms that "using simple arithmetic (addition and multiplication), the reimbursement value for any service, in any part of the United States, for any given year can be easily ascertained by the Defendant using the Medicare Part B Physicians Fee Schedule." *Id.*

16. As to the existence of RVU values for CPT Code 97010, the Court finds that this fact is not properly disputed. Defendant failed to raise this issue in its cross-motion or response, and its attempt to do so at the hearing is procedurally improper. *See Lloyd S. Meisels, P.A. v. Dobrofsky*, 341 So. 3d 1131 (Fla. 4th DCA 2022) [47 Fla. L. Weekly D1239a]. Moreover, even if the Court were to consider the argument, the record reflects that RVU values for CPT Code 97010 are publicly available and readily accessible through the Centers for Medicare and Medicaid Services (CMS) website. Accordingly, the Court finds that CPT Code 97010 is properly recognized as a reimbursable service under the PPFS-MPB and that its value is capable of being calculated in accordance with the statutory framework.

17. Upon review of Defendant's submissions, the Court finds that Defendant improperly bypassed the PPFS-MPB and instead applied the Workers' Compensation fee schedule as the sole basis

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for reimbursement.

18. Defendant has offered no persuasive justification for disregarding the RVU values applicable to CPT Code 97010 or for failing to apply the PPFS-MPB as required by section 627.736(5)(a)1.f. The Court finds that Defendant's reliance on the Workers' Compensation schedule in this context is erroneous.

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

A.Plaintiff's Motion for Summary Judgment as to the CPT Code 97010 issue is hereby **GRANTED**.

B.Defendant's Cross-Motion for Summary Judgment as to the CPT Code 97010 issue is hereby **DENIED**.

C.The remaining issues raised in Plaintiff's November 21, 2025 Motion for Summary Judgment and Defendant's December 11, 2025 Supplemental Motion for Summary Judgment and Motion to Strike or Dismiss shall be set for hearing.

* * *

Insurance—Personal injury protection—Coverage—Emergency medical condition—Exhaustion of policy limits—Where medical provider that is qualified by statute to make EMC determination submitted bill for examination of insured along with first medical record indicating that insured suffered EMC, insurer could not have exhausted $7,500 post-EMC coverage in payment of bills received prior to EMC determination—No merit to insurer's arguments that it had obligation to pay claims that were waiting upon receipt of EMC report and that policy limits were $10,000 in absence of finding that insured did not suffer EMC—Summary judgment is entered in favor of provider

CLEARCARE, LLC, a/a/o Gustavo Prado, Plaintiff, v. MERCURY INDEMNITY COMPANY OF AMERICA, Defendant. County Court, 17th Judicial Circuit in and for Broward County. Case No. COINX25008138. Division 70. August 5, 2025. Kim Theresa Mollica, Judge. Counsel: Thomas J. Wenzel, Steinger, Greene & Feiner, Plantation, for Plaintiff.

ORDER ON PLAINTIFF'S APRIL 8, 2025 MOTION FOR PARTIAL SUMMARY JUDGMENT CONCERNING THE PRIORITY OF PLAINTIFF'S REIMBURSEMENT RIGHTS FOR PROVIDERS FIRST FINDING THE EXISTENCE OF AN EMERGENCY MEDICAL CONDITION

THIS CAUSE having come before the court and the Court, having reviewed the motions and the court file, having heard argument of counsel on July 31, 2025, and the Court being otherwise sufficiently advised in the premises,

Facts and Background

The Court finds the relevant facts undisputed. Gustavo Prado was involved in a motor vehicle accident on October 31, 2020 for which Defendant extended Personal Injury Protection ("PIP") coverage. Plaintiff performed a medical examination on Mr. Prado, ultimately finding that Mr. Prado suffered from an "Emergency Medical Condition" (EMC). Plaintiff submitted a medical record together with its bill to Defendant. That submission was the first medical record from a medical provider with a license enumerated under §627.736(1)(a)3 (hereinafter "(5)(a)3 qualified medical provider") to submit a finding that Gustavo Prado suffered an "Emergency Medical Condition" (EMC) in the subject loss. There is no record of Defendant having received any record from a "(5)(a)3 qualified medical provider" determining that Mr. Prado suffered from an EMC prior to Defendant's receipt of Plaintiff's submission.

Defendant issued payment for various medical providers on the claim, but excluded Plaintiff's bill from coverage and denied same alleging that benefits were exhausted. Plaintiff filed a petition for declaratory relief concerning this matter and asks, *inter alia*, the Court to determine the parties rights under §627.736(5)(a)3-4 and whether an insurer can exhaust away from a "(5)(a)3 qualified medical provider" who is the first to submit an EMC finding and who submits a bill for the examination together with the medical record finding EMC.

Arguments

Plaintiff contends that the 2012 amendments to §627.736 create two coverages. The first is a $2,500 coverage for everyone covered under a PIP policy. The second coverage pool is a $7,500 coverage only open for those persons who: a) are covered under a PIP policy; and b) are found to have suffered an EMC by a "(5)(a)3 qualified medical provider" and c) when the aforementioned medical record is received by the insured's insurer.

First, Plaintiff argues that where a "(5)(a)3 qualified medical provider" submits its properly completed bill together with a medical record indicating the insured suffered an EMC, there is no bill that could ever be deemed to be compensable before such a bill. This is because only compensable bills establish a right to be covered and, under the facts established in cases like the instant case, there are no bills that could be considered compensable under the $7500 post-EMC coverage prior to the EMC. Plaintiff further contends that the entire compressibility of any bill during the $7,500 rests on the medical record finding of an EMC which, in the instant case, was performed in an exam and first submitted by Plaintiff.

Next, Plaintiff explains that the statutory EMC requirement under §627.736(1)(a)3-4 has already been declared ambiguous by the appellate Courts. *See Medical Center of Palm Beaches v. USAA Cas. Ins. Co.*, 202 So.3d 88 (Fla. 4th DCA 2016) [41 Fla. L. Weekly D2018b]. As a result, Plaintiff contends that the Court must give full effect to the intention behind the statutory provisions. One of the primary findings underpinning the legislature's enactment of the 2012 PIP reforms, which included the EMC requirement, was that certain classes of medical providers were over-performing services and using an ever-increasing percentage of available PIP benefits, to the detriment of insureds. Thus, the legislature created a 2-teir system with medical providers wherein only a specific, narrow class of medical providers (found in §627.736(1)(a)3) could trigger the availability of 75% of the total available benefits under a PIP policy. The legislature excluded anyone outside the narrow (1)(a)3 list from triggering the availability of the $7,500 coverage.

Based on this, Plaintiff contends that the legislative purpose of the 2012 amendment includes the fact that the legislature wanted patients to be examined by a "(5)(a)3 qualified medical provider" under the available PIP coverage to receive a review whether they met the qualifications of an EMC as defined in §627.732. Therefore, Plaintiff contends that if Defendant's adjustment exhibited in this case is permissible that it would wholly defeat the legislative purpose underpinning the EMC requirement in that a medical provider who was not qualified under the §627.736(1)(a)3 licensing restriction could submit enough bills to fully exhaust $10,000 *before* referring the insured patient to a "(5)(a)3 qualified medical provider" ensuring that the non-qualified medical provider was the only to obtain PIP payment. This was the very same societal harm cited by the legislature in its 2012 amendment. Plaintiff, inter alia, cites an order from Judge McHugh who made these same findings in *Clearcare LLC a/a/o Dani Alon v. Esurance*, COINX-22-022390 (Broward Cty. Ct. January 31, 2023)(Order denying Defendant's Motion for Summary Judgment on Exhaustion of Benefits).

Defendant contends that it has an obligation to swiftly issue payment on claims and that waiting to receive a report indicating that the patient suffered an EMC would detriment its insured. Defendant fears that any claims delay waiting for an EMC medical record would open it up to a bad faith claim. Defendant further argues that it is required to pay bills on a "first in, first out" basis. Defendant further

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contends that in the absence of a finding that the patient did not suffer an EMC, the limits remain at $10,000 as §627.736(5)(a)4 limitation is not triggered.

In response, Plaintiff cited several District Court of Appeals opinions to refute Defendant's position. *See Medical Center of Palm Beaches v. USAA Cas. Ins. Co.*, 202 So.3d 88 (Fla. 4th DCA 2016) [41 Fla. L. Weekly D2018b] and *Northwoods Sports Medicine and Physical Rehabilitation, Inc. v. State Farm Mut. Auto. Ins. Co.*, 137 So.3d 1049 (Fla. 4th DCA 2014) [39 Fla. L. Weekly D491a].

Findings

The Court finds the material facts undisputed and all that remains is an issue of law. The parties agree that Plaintiff is entitled to summary judgment under the specific facts of the claim at issue here. Specifically, $7,500 coverage is earmarked by the legislature for EMC and post-EMC care. The parties agreed that there is no timeliness of submissions issue in this case and thus, looking at Fla. Stat. §§627.732, 627.736, and 395.002, Plaintiff's position is well supported.

Accordingly, based on the foregoing, the Court ORDERS AND ADJUDGES as follows:

1. Plaintiff's April 8, 2025 motion for summary judgment is **GRANTED**.

2. Thus, the Court finds that Plaintiff is entitled to the declaratory relief it sought in its February 4, 2025 petition.

* * *

Insurance—Personal injury protection—Coverage—Exhaustion of policy limits—Gratuitous payments—Insurer's claim for unbundled code that was not compensable under Medicare or workers' compensation fee schedules was gratuitous and did not count against policy limits—Insurer owes provider amount of gratuitous payment where medical provider's bills are indisputably compensable and exceed gratuitous payment issued by insurer

CHIROPRACTIC CLINICS OF SOUTH FLORIDA, P.L., Plaintiff, v. INFINITY INDEMNITY INSURANCE COMPANY, Defendant. County Court, 17th Judicial Circuit in and for Broward County. Case No. COINX23013180. Division 61. March 20, 2025. Corey Amanda Cawthon, Judge. Counsel: Thomas J. Wenzel, Steinger, Greene & Feiner, Plantation, for Plaintiff.

ORDER ON CROSS-MOTIONS FOR SUMMARY JUDGMENT

THIS CAUSE having come before the court and the Court, having reviewed the motions and the court file, having heard argument of counsel, and being otherwise sufficiently advised in the premises, hereby finds as follows:

Background

Ena Abad was insured by a policy of insurance issued by Defendant which included a provision for payment of up to $10,000 of Personal Injury Protection ("PIP") "**medical expenses, work loss and replacement services**". *See* Florida Amendatory Endorsement 1095.

There was no dispute that the aforementioned policy clearly and unambiguously outlines coverage that will be provided under the policy and includes several similarly clear and unambiguous limitations on coverage and what will be paid including narrowed definitions surrounding the defined term "**medical expenses**". Defendant explicitly states that "[R]eimbursment for **medical expenses** shall be limited to and shall not exceed 80% of the schedule of maximum charges set forth in Section 627.736(5)(a)(1) Florida Statutes." Defendant's policy further clearly explains:

> **We** will pay **medical expenses** according to the applicable fee schedule or payment limitation under Medicare which is in effect on March 1 of the year in which the services, supplies, and care is rendered and ort the area in which such services, supplies or care is rendered. The applicable fee schedule or payment limitation applies throughout the remainder of that year. . .

Defendant further invokes the provision from the statutory "schedule of maximum charges" regarding usage of Medicare coding policies and payment methodologies.

Plaintiff submitted bills to Defendant, however its bills were not paid because Defendant alleged that policy benefits were exhausted. Unsatisfied with this response, Plaintiff submitted a pre-suit demand letter pursuant to Fla. Stat. §627.736(10) and later a lawsuit to obtain PIP benefits and a declaration of coverage.

Defendant Answered the complaint, *inter alia*, maintaining its exhaustion claim. Plaintiff replied to Defendant's affirmative defenses *inter alia* claiming that Defendant's exhaustion defense was insufficiently pleaded, that Defendant cannot bear its burden of proof that Defendant only paid valid claims and that it did not act in bad faith on the claim. Plaintiff also further alleged that Defendant made improper payments on the claim and requested judicial estoppel to prohibit Defendant from taking sworn positions in other cases that run counter to its position in this case.

Defendant filed its motion for summary judgment on exhaustion on October 30, 2024 and an affidavit from An Lien, Defendant's litigation specialist. The gravamen of Defendant's motion and affidavit is that Defendant paid the amount of $10,000 and that fact acts as a total bar to Plaintiff's action.

Plaintiff filed its timely response in opposition to Defendant's motion for summary judgment on January 3, 2025. Plaintiff's motion for summary judgment was filed on December 18, 2024. Defendant did not respond to Plaintiff's motion.

In support of its position, Plaintiff filed the transcript of a deposition of Andy Lien, Defendant's Corporate Representative in opposition to Defendant's motion and in support of its own. Plaintiff also filed an abundance of materials to establish that one of the services, which is identified by CPT Code A4550 and which was paid by Defendant according to the full charge rate without any fee schedule reduction ($225), did *not* constitute a "valid claim", was not compensable under either Medicare or Workers' Compensation, and was considered an improperly unbundled code under Medicare and Workers' Compensation.

Through stipulation, admissions, discovery, the oral positions taken by the parties, and the Summary Judgment Rule applicable to the 2024-filed motions for summary judgment,the case as presented at summary judgment distilled to the exhaustion question.

Findings

The Court finds the following undisputed in the record:

1. Defendant's policy of insurance specifically limits payments under its policy to the statutory "schedule of maximum" charges.

2. Defendant paid $225 for Surgical Trays identified by CPT Code A4550.

3. According to the methodology expressed in §627.736(5)(a)1.f., A4550 is not reimbursable.

4. A4550 is not reimbursable under the applicable Medicare fee schedules.

5. A4550 is *not* compensable under the applicable Workers' Compensation fee schedules.

6. In fact, A4550 is considered improperly unbundled from the other services performed that day by Omni under Medicare and Workers' Compensation.

7. Because A4550 was improperly unbundled, neither the insurer nor the insured were responsible for any payments for this service, supply, or care.

8. There is no dispute over the fact that Plaintiff's services were otherwise compensable.

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The Court finds that the concept of exhaustion doesn't exist in a vacuum as the Court has previously ruled. *See Alliance Spine & Joint II, Inc. v. Permanent General Assurance Corporation*, COSO-20-008747 (Fla. Broward Cty. Ct. 2022) [32 Fla. L. Weekly Supp. 54a]. As a basic contractual concept, Defendant promised to pay $10,000 of specifically, narrowly defined "**medical expenses, work loss** and **replacement services**". Here, the Court finds that although Defendant established that it issued $10,000 of payments, it failed to establish that all $10,000 of payments were for "**medical expenses, work loss** and **replacement services**" as defined in the contract of insurance.

To the contrary, Plaintiff established that the A4550 payments were extracontractual. A4550 was an unbundled code, without any reimbursement available under either Medicare or Workers' Compensation. Although there still generally remains good faith disputed litigation surrounding the issue of "exhaustion", one thing is absolutely clear from the district courts: if neither the insurer nor the insured is liable for payment for a service, care, or supply and the insurer issues payment, such payment is gratuitous and does not count against the benefits limitation. *See Progressive Select Ins. Co. v. Dr. Rahat Faderani, DO, MPH, P.A.*, 330 So.3d 928 at fn. 2 (Fla. 4th DCA 2021) [46 Fla. L. Weekly D2420a] (explaining the undisputed exception to exhaustion of benefits under a virtually identical provision to the one at issue in this case where the insurer issued payment where neither the insured nor the insurer were obligated to issue payment).

Therefore, based on the undisputed facts and the foregoing, the Court finds that Defendant improperly exhausted benefits. The Court finds that until Defendant issues $10,000 under its contractual terms, its obligations are not terminated. Thus, its liability is not yet exhausted on this claim. As Plaintiff's bills are undisputably compensable and exceed the gratuitous payments issued by Defendant, the Court finds that Defendant owes Plaintiff in the amount of the gratuitous payment for A4550.

In accordance with the Court's findings, the Court ORDERS AND ADJUDGES as follows:

1. Defendant's motion for summary judgment is DENIED.
2. Plaintiff's motion for summary judgment is GRANTED.

* * *

Insurance—Personal injury protection—Coverage—Medical expenses—Reimbursement—In calculating reimbursement of PIP benefits for CPT code 98960, insurer improperly used workers' compensation schedule rather than RVU formula established by CMS—Argument that CPT code was not compensable because it was unbundled was not preserved in joint stipulation or insurer's motion for summary judgment—Even if preserved, issue lacks merit where permissive limitation on compensation of unbundled services is not applicable to determining Medicare allowable amounts under PIP statute, and PIP statute clearly explains that services which are not required to be reimbursed are those not reimbursable under either Medicare or workers' compensation, which is not the case here

SOS MEDICAL CENTER, a/a/o Clendie Ulysse, Plaintiff, v. INFINITY AUTO INSURANCE COMPANY, Defendant. County Court, 17th Judicial Circuit in and for Broward County. Case No. COINX23013525. Division 100. November 5, 2024. Jackie Powell, Judge. Counsel: Thomas J. Wenzel, Steinger, Greene & Feiner, Plantation, for Plaintiff.

ORDER ON THE PARTIES' CROSS MOTIONS FOR FINAL SUMMARY JUDGMENT

THIS CAUSE having come before the court and the Court, having reviewed the motions and the court file, having heard argument of counsel, and being otherwise sufficiently advised in the premises, the Court finds as follows:

Factual Background and Dispute

The Court finds that the factual posture of this case is largely undisputed. The dispute in this case concerns a service billed by Plaintiff as CPT Code 98960. The subject insurance policy has adopted the statutory "schedule of maximum charges". Defendant received Plaintiff's bill for CPT Code 98960, agreed that the loss and the service was covered under the applicable policy of insurance, and issued a payment for that service. Defendant issued payment according to the Workers' Compensation fee schedule—allowing $33.00 and paying 80% of that amount, $26.40.

Plaintiff filed the instant suit because it contends that Defendant should have reimbursed the service at a higher rate. Specifically, Plaintiff contends that it was inappropriate for Defendant to resort to the Workers' Compensation schedule when there are values for the CPT Code found in the

RVU Value Files for the service year in question. Plaintiff postures that it is inappropriate to skip to the Workers' Compensation fee schedule when the service has RVU values resulting in a reimbursement amount. Plaintiff further contends that the Defendant should have put the RVU value figures into a mathematical formula colloquially referred to as the "RVU formula". *See Sunrise Chiropractic and Rehabilitation Center, Inc. v. Security National Ins. Co.*, 321 So.3d 786 (Fla. 4th DCA 2021) [46 Fla. L. Weekly D1150a]. There is no dispute that calculations based on the "RVU formula" would have resulted in a greater reimbursement for CPT Code 98960 than Defendant's Workers' Compensation based payment—a $64.62 allowable amount and a $51.70 reimbursement.

Defendant primarily contended CMS.gov "does not price the requested HCPCS Code". Based on this, Defendant contended that CPT Code 98960 is not payable under Medicare Part B fee schedule and, thus, its resort to Workers' Compensation was appropriate. At the hearing, Defendant contended that 98960 was unbundled and, as a result, was not compensable under this alternative theory.

Plaintiff responded that Defendant's reliance on the CMS.gov tool was inappropriate and, in fact, constructively rejected by the 4th DCA in several cases, such as *Progressive Select Ins. Co. v. In House Diagnostic Services, Inc.*, 359 So.3d 817 (Fla. 4th DCA 2023) [48 Fla. L. Weekly D860g]. Plaintiff also contended that Defendant had not preserved its unbundling argument by virtue of the joint stipulation and because the argument wasn't explicitly made in Defendant's motion for summary judgment but that, even if the argument was preserved, Defendant's position was based on an incorrect statutory reading.

Findings and Conclusion of Law

The Court agrees with Plaintiff's position. First, it is abundantly clear to the Court that the 4th DCA has spoken clearly on how insurers should calculate the Medicare Fee schedule in *Sunrise Chiropractic and Rehabilitation Center, Inc. v. Security National Ins. Co.*, 321 So.3d 786 (Fla. 4th DCA 2021) [46 Fla. L. Weekly D1150a]. Put simply, to determine the allowable amount under Medicare, an insurer need only do the arithmetic described in *Sunrise Chiropractic*: multiply "(1) the relative value of a service; (2) the conversion factor for the particular year; and (3) the geographic adjustment factor applicable to the locality in which the service was provided". *Id.* at 788.

The Court further agrees with Plaintiff that the sum position of the multiple 4th DCA cases discussed is that parties cannot simply rely on the lookup tools found on CMS.gov or First Coast Service Options websites in order to determine service compensability and reimbursement amounts. *See Sunrise Chiropractic and Rehabilitation Center, Inc. v. Security National Ins. Co.*, 321 So.3d 786 (Fla. 4th DCA 2021) [46 Fla. L. Weekly D1150a] (telling insurers to perform the mathematical calculations) and *Progressive Select Ins. Co. v. In House*

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Diagnostic Services, Inc., 359 So.3d 817 (Fla. 4th DCA 2023) [48 Fla. L. Weekly D860g] (ruling in favor of insurer who, in part, argued that "because Medicare did not create its online search tool for use in the context of Florida's PIP statute, and because Florida's PIP statute does not mention the search tool in discussing available reimbursement rates, the limiting charge reflected on the website for a given medical service should be ignored in determining the appropriate reimbursement rate for PIP services").

As far as Defendant's unbundling argument, the Court does not disagree with Plaintiff's contentions regarding lack of preservation. However, even if the Court found that Defendant was entitled to make this argument, it also agrees with Plaintiff that the Defendant has misread the applicable statutes.

The statutory fee schedule allowable amounts are described in §627.736(5)(a)(1). The applicable language for determining allowable amounts for medical providers in the same class of provider as Plaintiff is as follows:

> 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-subsubparagraphs (II) and (III).
>
> (II) Medicare Part B, in the case of services, supplies, and care provided by ambulatory surgical centers and clinical laboratories.
>
> (III) The Durable Medical Equipment Prosthetics/Orthotics and Supplies fee schedule of Medicare Part B, in the case of durable medical equipment.
>
> However, if such services, supplies, or care is not reimbursable under Medicare Part B, as provided in this sub-subparagraph, the insurer may limit reimbursement to 80 percent of the maximum reimbursable allowance under workers' compensation, as determined under s. 440.13 and rules adopted thereunder which are in effect at the time such services, supplies, or care is provided. Services, supplies, or care that is not reimbursable under Medicare or workers' compensation is not required to be reimbursed by the insurer.

(Emphasis added). Defendant's compensability argument stems from sub-subparagraph §627.736(5)(b)1. which excuses payment:

> e. For any treatment or service that is upcoded, or that is unbundled when such treatment or services should be bundled, in accordance with paragraph (d).

There exists at least two deficiencies underlying Defendant's position. First, the permissive limitation found in sub-subparagraph §627.736(5)(b)1 is not applicable to determining Medicare allowable amounts under (5)(a)1. The statutory language allowing an insurer to limit reimbursement to the Workers' Compensation rate is limited to what is non-compensable as "provided in this sub-subparagraph"—meaning §627.736(5)(a)1. There is nothing in sub-subparagraph (5)(a)1. which would permit Defendant to reject the Medicare RVU calculations. Bundling issues, even if properly raised, are in a wholly distinct sub-subparagraph and, thus, are excluded from consideration by the clear and unambiguous statutory language.

Second, §627.736(5)(a)1.f. also clearly explains that services which are not required to be reimbursed are those which were not reimbursable under either Medicare or workers' compensation. Here, there is no question that the services performed by Plaintiff do not have this characteristic—a fact seemingly conceded by Defendant through its payment and through the joint stipulations and materials filed by the parties.

Thus, the Court finds that the proper fee schedule calculation is to performing the calculations according to the formula described in *Sunrise Chiropractic*. Using the undisputed RVU figures results in a higher reimbursement rate for Plaintiff ($51.70 as opposed to Defendant's $26.40 reimbursement). Thus, the Court finds that Defendant breached the contract and underpaid $25.30. Simply put, Defendant should have continued issuing payments according to the same methodology it knowingly employed in the other exemplar Infinity explanations of benefits filed by Plaintiff.

Accordingly, the Court ORDERS AND ADJUDGES as follows:

1. Plaintiff's motion or Final Summary Judgment is GRANTED.
2. Defendant's motion for Final Summary Judgment is DENIED.

* * *

Contracts—Warranties—Magnuson Moss Warranty Act—Affirmative defenses that are merely conclusory statements and do not allege ultimate facts that would support defenses are stricken with leave to amend—Motion to strike is denied as to defenses that are sufficiently pled in manner that provides fair notice of defenses being asserted

IRMA SANDERS, Plaintiff, v. VOLKSWAGEN GROUP OF AMERICA, INC., Defendant. County Court, 17th Judicial Circuit in and for Broward County. Case No. COSO25083389. Division 62. February 27, 2026. Woody Clermont, Judge. Counsel: Joshua Feygin, Lemonaid Firm PLLC, Hollywood, for Plaintiff. Brendan P. Smith, Orlando, for Defendant.

ORDER GRANTING IN PART AND DENYING IN PART PLAINTIFFS' MOTION TO STRIKE AFFIRMATIVE DEFENSES

THIS CAUSE came before the Court on Plaintiffs' Motion to Strike Defendant's Affirmative Defenses filed pursuant to Florida Rule of Civil Procedure 1.140(f) and Rule 1.110(d), as amended.

The Court has reviewed the Motion, Defendant's Response, the pleadings, and the court file, and is otherwise fully advised.

1. Applicable Standard

Florida Rule of Civil Procedure 1.140(f) permits the Court to strike from a pleading any insufficient defense and/or redundant, immaterial, impertinent, or scandalous matter. Plaintiffs' Motion is directed to the legal sufficiency of Defendant's pleaded affirmative defenses and the absence of ultimate facts supporting those defenses.

Defendant's Response discusses the standards applicable to motions to strike under both Rule 1.140(f) and Rule 1.150 (sham pleadings).

However, Plaintiffs' Motion is brought under Rule 1.140(f) and Rule 1.110(d), not Rule 1.150. Accordingly, the Court applies the Rule 1.140(f) standard and does not treat the Motion as a sham-pleading motion requiring verification or an evidentiary hearing.

Rule 1.110(d), as amended, requires that each affirmative defense contain "a short and plain statement of the ultimate facts supporting the defense." At the pleading stage, the purpose is fair notice, so the opposing party can understand the nature of the defense and prepare to meet it.

2. Analysis

A. Affirmative Defenses 1-4

Defendant's First through Fourth Affirmative Defenses are pleaded largely as conclusions without ultimate supporting facts. Specifically:

Defense 1 alleges generally that Defendant "complied with and satisfied all warranty obligations" and "repaired all warrantable defects," without pleading ultimate facts identifying the alleged defects, repairs performed, dates/timing, or the specific warranty provisions relied upon.

Defense 2 alleges Plaintiffs may not recover under Magnuson-Moss because "the subject vehicle was repaired," without pleading ultimate facts explaining the basis for that conclusion.

Defense 3 asserts failure to mitigate. While brief, Defense 3 sufficiently identifies the legal theory and provides sufficient factual allegations constituting fair notice of the issue to be litigated. The Court finds Defense 3 provides fair notice of the defense being

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asserted and is sufficiently pleaded for purposes of Rule 1.110(d) at this stage of the proceedings. **Accordingly, Plaintiffs' Motion is DENIED as to Defense 5**

Defense 4 asserts incidental and consequential damages are disclaimed, without pleading ultimate facts identifying the disclaimer language relied upon or the factual basis for enforceability.

While these theories may be capable of being pleaded as affirmative defenses, as presently stated they do not satisfy Rule 1.110(d)'s requirement that affirmative defenses include a short and plain statement of ultimate facts supporting the defense. Therefore, Defenses 1, 2, 4 are subject to being stricken under Rule 1.140(f), **with leave to amend**. Defense 3 as stated, is **DENIED**.

B. Affirmative Defense 5

Defendant's Fifth Affirmative Defense alleges Plaintiffs failed to complete mandatory preconditions to suit under 15 U.S.C. § 2310, specifically alleging Plaintiffs were required to submit their claim to the Better Business Bureau Auto Line Program prior to filing suit. The Answer likewise raises the same issue in response to the Complaint's allegations.

The Court finds Defense 5 provides fair notice of the defense being asserted and is sufficiently pleaded for purposes of Rule 1.110(d) at this stage of the proceedings. Accordingly, Plaintiffs' Motion is denied as to Defense 5.

3. Ruling

It is **ORDERED** AND **ADJUDGED**:

A. Plaintiffs' Motion to Strike is **GRANTED** as to Defendant's Affirmative Defenses 1, 2, and 4, and those defenses are **STRICKEN WITHOUT PREJUDICE**.

B. Defendant is granted leave to file Amended Affirmative Defenses as to Defenses 1, 2, 4 within 20 days of the date of this Order, consistent with Florida Rule of Civil Procedure 1.110(d).

C. Plaintiffs' Motion to Strike is **DENIED** as to Defendant's Affirmative Defenses 3 and 5.

*　*　*

Insurance—Personal injury protection—Coverage—Summary judgment—Final summary judgment is entered in medical provider's favor where insurer failed to file response to provider's motion, admitted to key elements of provider's case, and admitted that it had no defense

BACK TO MIND CHIROPRACTIC, Plaintiff, v. STAR CASUALTY INSURANCE COMPANY, Defendant. County Court, 17th Judicial Circuit in and for Broward County. Case No. COINX23026756. Division 82. July 24, 2024. Kal Evans, Judge. Counsel: Thomas J. Wenzel, Steinger, Greene & Feiner, Plantation, for Plaintiff.

ORDER GRANTING PLAINTIFF FINAL SUMMARY JUDGMENT AND FINAL JUDGMENT

THIS CAUSE having come before the court on July 18, 2024 on Plaintiff's motion for summary judgment and the Court, having reviewed the motions and the court file, having heard argument of counsel, having reviewed Rule 1.510 and the prior orders entered in this case, and being otherwise sufficiently advised in the premises, the Court finds as follows: ORDERS AND ADJUDGES as follows:

1. Plaintiff filed motions for summary judgment establishing undisputed facts and sufficiently referencing materials, such as admissions in the Court file, pursuant to to Rule 1.510(c). Defendant admitted to the key elements of Plaintiff's case and admitted to a lack of a defense. Among these summary judgment materials was an admission by Defendant that Star Casualty Insurance Company owed Plaintiff more than $5.

2. Defendant, in response, did not file a response at all. Similarly, Defendant filed no materials in support of any contrary factual position to the undisputed facts established by Plaintiff.

3. The Court finds Plaintiff's position undisputed. *See Lloyd S. Meisels, P.A. v. Dobrofsky*, 341 So.3d 1131 (Fla. 4th DCA 2022) [47 Fla. L. Weekly D1239a].

4. Coverage counsel for Defendant, who appeared for this one hearing, requested a last ditch attempt for additional time to respond. However, the Court also takes note of the multiple Court orders compelling Defendant to act in this case as well as Plaintiff's June 14 motion addressing the numerous Court orders violated by Defendant (set for hearing August 1, 2024).

5. Because the Court is entering Final Summary Judgment in Plaintiff's favor today, all future hearings are cancelled in this matter (aside from any future hearings concerning the determination of the amount of fees and costs). However, in the event jurisdiction is later returned to the trial Court on this matter, the parties shall immediately reset Plaintiff's June 14 motion.

Accordingly, the Court ORDERS AND ADJUDGES as follows:

1. Plaintiff's motions for summary judgment are granted.

2. The Court hereby enters final judgment in favor of Plaintiff, BACK TO MIND CHIROPRACTIC, which shall recover from Defendant, STAR CASUALTY INSURANCE COMPANY, in the above entitled action.

3. The Final Judgment amount as to damages is **$5.00**. This Final Judgment amount consists of medical benefits and prejudgment interest accrued through entry of the Final Judgment.

4. This Final Judgment shall bear interest at the legal rate, ___% per annum, upon the entire sum of the judgment for which let execution issue forthwith.

5. The Court finds Plaintiff entitled to an award of attorneys' fees and costs. The Court retains jurisdiction to determine the amount to be awarded and to enter further orders to enforce this judgment

*　*　*

Insurance—Personal injury protection—Coverage—Exhaustion of policy limits—Improper payments—Motion for rehearing of order denying insurer's motion for summary disposition on exhaustion of benefits defense is denied where there is sufficient evidence to establish that insurer made payments of benefits that were improper under policy limitations and exclusions

ELITE SPINE GROUP, INC., Plaintiff, v. UNITED AUTOMOBILE INSURANCE COMPANY, Defendant. County Court, 17th Judicial Circuit in and for Broward County. Case No. CONO19013822. Division 73. April 5, 2022. Steven P. DeLuca, Judge. Counsel: Thomas J. Wenzel, Steinger, Greene & Feiner, Plantation, for Plaintiff.

ORDER ON DEFENDANT'S MOTION FOR REHEARING ON THE ISSUE OF BENEFITS EXHASUTED

THIS CAUSE having come before the court and the Court, having reviewed the motions and the court file, having heard argument of counsel, and being otherwise sufficiently advised in the premises, ORDERS AND ADJUDGES as follows:

On October 8, 2020, the Court previously denied Defendant's motion for summary disposition regarding the issue of benefits exhausted. At the first hearing, Plaintiff had taken the position that, at a minimum, Defendant failed demonstrate the lack of a triable issue on the issue of benefits exhausted because, contrary to Defendant's clear and unambiguous policy language, it a) issued payment for care, services, or supplies that were not compensable under the Medicare or Workers' Compensation fee schedule, b) issued payment for care, services, or supplies above the amounts set under the applicable statutory or policy fee schedule, and c) made a payment to a medical provider unauthorized to accept PIP payments pursuant to Fla. Stat. §627.736(1)(a)2.

Defendant moved for rehearing based on *Progressive Select Ins. Co. v. Dr. Rahat Faderani, DO, MPH, P.A., a/a/o Roberson Pierre*,

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330 So.3d 928 (Fla. 4th DCA 2021) [46 Fla. L. Weekly D2420a]. The Court held a hearing on March 29, 2022. Defendant alleged, *ore tenus*, that Plaintiff had not filed sufficient evidence to establish its position and that Plaintiff failed to file a reply. Plaintiff did take note that neither of Defendant's motions raised the lack of reply issue.

The Court finds as follows:

In *Faderani*, the 4th DCA explained, **"[b]ecause the use of NCCI edits comports with the statute, Progressive did not make improper payments** or act in bad faith in using the edits to reduce the bill of the third-party provider. As it is undisputed that Progressive exhausted insured's PIP benefits by the proper payment of claims prior to this lawsuit, Progressive is not liable for payment in excess of the policy limits." Accordingly, the *Faderani* case clearly demonstrates that improper payments will preclude the finding of a proper exhaustion of benefits. In this case, there is sufficient evidence to establish that the Defendant made improper payments considering its policy limitations and exclusions.

Concerning the lack of reply issue, the Court finds that, in this small claims case, the issue was properly before the Court as this was not a surprise issue as Plaintiff raised the issue no later than October of 2020. However, the Court grants Plaintiff's *ore tenus* motion for leave to amend.

Based on the foregoing, Defendant's motion for rehearing is **DENIED**.

*   *   *

Landlord-tenant—Public housing—Eviction—Notice—Defects—Amounts other than rent—Three-day notice is fatally defective for including in rent due the amount of monthly installments for additional security deposit because those amounts were not treated as rent anywhere in parties' lease—Complaint dismissed, and funds in court registry are disbursed

ZANETTA LYALL, Plaintiff, v. FRANETTA EDIE, Defendant. County Court, 17th Judicial Circuit in and for Broward County. Case No. CONO25081548. Division 73. February 11, 2026. Steven P. DeLuca, Judge. Counsel: Brian Kowal, for Plaintiff. Jesica Alexander, Coast to Coast Legal Aid of South Florida, for Defendant.

FINAL JUDGMENT OF DISMISSAL AND ORDER DISBURSING FUNDS FROM COURT REGISTRY

THIS CAUSE came before the Court on January 21, 2025, for a Final Hearing via Zoom Teleconference. The Court has reviewed the entries in the Clerk of Court system and the Court File; heard testimony and evidence from Plaintiff/Landlord and Defendant/Tenant, heard arguments from Counsel for Plaintiff and Counsel for Landlord; and considered the applicable statutory law, and orders as follows:

1. The Defendant's Motion to Dismiss is hereby GRANTED.

2. The Defendant is a Section 8 Housing Choice Voucher Holder with the Broward County Housing Authority.

3. The Total Contract Rent is determined to be $4,395, as stated in the parties' lease and as consistent with the Housing Assistance Payments (HAP) Contract that the Landlord signed with the Broward County Housing Authority.

4. Since Defendant is a Section 8 Housing Choice Voucher holder, the Defendant's portion of the rent is determined by the Broward County Housing Authority.

5. The Defendant's portion of the rent is currently $70 per month, and the Broward County Housing Authority portion is the remaining balance of $4,325.

6. The Court finds that Paragraph 5 of the parties' lease identifies an additional payment of **$4,260**, payable in monthly installments of **$355**, as an **"additional security deposit."**

7. The Court further finds that this charge is **not deemed, described, or treated as rent anywhere in the lease.** Therefore, it shall not be considered rent.

8. Therefore, Plaintiff's 3-Day notice is defective as it includes amounts other than rent as determined by the parties' lease, the Broward County Housing Authority, and the rules of the Section 8 Housing Choice Voucher Program.

9. Plaintiff has failed to prove that Defendant's tenancy shall be terminated for failure to pay rent.

IT IS THEREFORE ORDERED and ADJUDGED that this cause is DISMISSED WITHOUT PREJUDICE.

*   *   *