Filing # 234248856 E-Filed 10/22/2025 03:52:19 PM

IN THE CIRCUIT COURT OF THE TWENTIETH JUDICIAL CIRCUIT
IN AND FOR COLLIER COUNTY, FLORIDA

CIVIL ACTION

LARISA ELZON,
Plaintiffs,

Case No: 11-2024-CA-001825-0001-01

LAWRENCE GRAZIO, THE AVONDALE GROUP INC, FARMERS CASUALTY INSURANCE COMPANY,
Defendants.
_______________________________________/

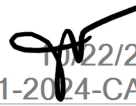
ORDER GRANTING DEFENDANTS' MOTION IN LIMINE

THIS CAUSE came before the Court on "Defendants' Motion in Limine Regarding Admissible Evidence of Past and Future Medical Treatment or Services Expenses," filed September 15, 2025 (Docket No. 220). The Court took the motion up for hearing on October 20, 2025.

The motion asks the Court to find that section 768.0427, Florida Statutes, applies to this case. The statute became law on March 24, 2023, and applies to causes of action filed after enactment. Ch. 2023-15, §30, Laws of Fla. While the incident in this case occurred before the current version of the statute was enacted, this case was filed on August 30, 2024, after the enactment of the statute. Plaintiff argues that applying the statute to their case would be unconstitutional. Having considered both the Defendants' motion and Plaintiff's response, the Court finds that since this case was filed after March 24, 2023, section 768.0427 applies.

With respect to unpaid past medical bills, the Court reads the statute to require Plaintiff to present evidence in accordance with section 768.0427(2)(b)1-4. The Court's reading of the statute does not limit Plaintiff to only presenting such evidence, but that it shall include such evidence. Similarly, when it comes to future medical treatment or services, Plaintiff shall offer evidence in accordance with section 768.0427(2)(c)1-2, whichever is applicable.

DONE AND ORDERED in Chambers, in Collier County, Florida, on this 22nd day of October, 2025.



10/22/2025 13:07:27
11-2024-CA-001825-0001-01
James F. Stewart, Circuit Court Judge uq6dghAf
11-2024-CA-001825-0001-01 10/22/2025 13:07:27

James F. Stewart, Circuit Judge

Electronic Service via eFiling Portal:
Collier eFile Account <col-efiling@ca.cjis20.org>
Donna Lugar <donnatisch.com@gmail.com>
Donna M. Wilson-Sampson <orlandolegal@farmersinsurance.com>, <donna.wilson-sampson@farmersinsurance.com>
Elizabeth A. Dehaan <service-edehaan@bankerlopez.com>
Ody's Professional Process <ody@odyprocess.com>
Randall L. Spivey <Randall@SpiveyLaw.com>, <Wendy@SpiveyLaw.com>, <andrew@spiveylaw.com>
Amber Spradley <ambers@spiveylaw.com>
Lisa Balonik <lisa@spiveylaw.com>
Emily Candela <emily@spiveylaw.com>

Filing # 231577594 E-Filed 09/15/2025 03:30:57 PM

IN THE CIRCUIT COURT OF THE TWENTIETH JUDICIAL CIRCUIT
IN AND FOR COLLIER COUNTY, FLORIDA
CIVIL ACTION

LARISA ELZON,

Plaintiff,

vs. CASE NO.: 2024-CA-001825

LAWRENCE GRAZIO, THE AVONDALE GROUP, INC., and FARMERS CASUALTY Insurance Company f/k/a METROPOLITAN CASUALTY INSURANCE COMPANY,

Defendants.
______________________________________/

DEFENDANTS' MOTION IN LIMINE REGARDING ADMISSIBLE EVIDENCE OF PAST AND FUTURE MEDICAL TREATMENT OR SERVICES EXPENSES

Defendants, LAWRENCE GRAZIO and THE AVONDALE GROUP, INC., ("Defendants"), by and through their undersigned counsel and pursuant to the Florida Rules of Civil Procedure and Chapter 90 of the Florida Statutes, move to restrict and allow evidence in accordance with section 768.0427(2), Florida Statutes, regarding the admissibility of past and future medical treatment and services expenses. In support, Defendants state as follows:

1. This is a post-tort reform case. The incident allegedly occurred on August 27, 2021, and the Complaint was filed August 30, 2024. Compl. ¶ 1. Section 768.0427 was enacted on March 24, 2023, and applies to any case that was filed after that date. Ch. 2023–15, §§ 30, 31, Laws of Fla. This case was filed after that date. As a result, section 768.0427 applies.

2. The section is titled "Admissibility of evidence to prove medical expenses in personal injury or wrongful death actions; disclosure of letters of protection; recovery of past and future medical expenses damages."

3. Here, Defendants seek to limit the evidence that Plaintiff will present to the jury to the text and context of the statute. Plaintiff has had health insurance through United Healthcare and Blue Cross Blue Shield. **Exhibit A**–Excerpt of Plf. Dep. 31:9-32:7. Because of this, Plaintiff is required to produce to the jury "evidence of the amount which such health care coverage is obligated to pay the health care provider to satisfy the charges for the claimant's incurred medical treatment or services, plus the claimant's share of medical expenses under the insurance contract or regulation," per Florida Statute Section 768.0427(2)(b)(1).

4. Additionally, Plaintiff has treated with multiple medical providers under letters of protections or similar financial agreements. Per Florida Statute Section 768.0427(2)(b)(3), because of this, Plaintiff will be required to produce to the jury "evidence of the amount the claimant's health care coverage would pay the health care provider to satisfy the past unpaid medical charges under the insurance contract or regulation, plus the claimant's share of medical expenses under the insurance contract or regulation, had the claimant obtained medical services or treatment pursuant to the health care coverage."

5. Defendants will show that a plain reading of this statute makes clear that the Plaintiff has the burden to admit evidence of the applicable amounts mentioned above to recover damages for past and future medical damages. If Plaintiff cannot produce this information, then a jury cannot award these damages to Plaintiff.

6. Alternatively, and only if the Court first determines Plaintiff does not have the burden to admit the evidence to prove damages, the Court should permit Defendants to offer evidence specifically permitted by section 768.0427.

MEMORANDUM OF LAW

A. Section 768.0427 applies to this case because the action was filed after the section's effective date.

Plaintiff cannot reasonably dispute that this statute does not apply to this case. The statute makes clear that it applies to causes of action filed after the effective date. Ch. 2023–15, §§ 30, 31, Laws of Fla. (providing that the provision "shall apply to causes of action filed after the effective date of the act," and it "shall take effect upon becoming a law"); *See Wolf v. Williams*, No. 5D2023–3234, 2024 WL 4875925, at *1 (Fla. 5th DCA Nov. 25, 2024) (acknowledging the same). There should be no dispute that the statute became a law on March 24, 2023, making the effective date of the statute March 24, 2023.

In *Wolf*, the Fifth District affirmed that this section applies to cases filed after March 24, 2023. Specifically, the court held that "section 768.0427 applies only 'to causes of action filed after the effective date of' its enacting legislation." *Id.* (quoting Ch. 2023–15, § 30, Laws of Fla.). There can be no dispute that this case was filed after the effective date of the statute; the Complaint was filed on August 30, 2024, 2024. *See generally* Compl.

B. The plain language of section 768.0427 places the burden on Plaintiff "to prove" the amount of medical damages in accordance with the Statute.

Turning to the language of section 768.0427, the relevant subsection provides:

> **(2) Admissible evidence of medical treatment or service expenses.** – Evidence offered **to prove** the amount of damages for past or future medical treatment or services in a personal injury or wrongful death action is admissible as provided in this subsection.
>
> (a) Evidence offered to prove the amount of damages for past medical treatment or services that have been satisfied is limited to evidence of the amount actually paid, regardless of the source of payment.
>
> (b) Evidence offered to prove the amount necessary to satisfy unpaid charges for incurred medical treatment or services **shall include**, but is not limited to, evidence as provided in this paragraph.
>
> 1. If the claimant has health care coverage other than Medicare or Medicaid, evidence of the amount which such health care coverage is

obligated to pay the health care provider to satisfy the charges for the claimant's incurred medical treatment or services, plus the claimant's share of medical expenses under the insurance contract or regulation.

2. If the claimant has health care coverage but obtains treatment under a letter of protection or otherwise does not submit charges for any health care provider's medical treatment or services to health care coverage, evidence of the amount the claimant's health care coverage would pay the health care provider to satisfy the past unpaid medical charges under the insurance contract or regulation, plus the claimant's share of medical expenses under the insurance contract or regulation, had the claimant obtained medical services or treatment pursuant to the health care coverage.

. . .

(c) Evidence offered to prove the amount of damages for any future medical treatment or services the claimant will receive **shall include**, but is not limited to, evidence as provided in this paragraph.

1. If the claimant has health care coverage other than Medicare or Medicaid, or is eligible for any such health care coverage, evidence of the amount for which the future charges of health care providers could be satisfied if submitted to such health care coverage, plus the claimant's share of medical expenses under the insurance contract or regulation.

§ 768.0427(2), Fla. Stat. (2024) (emphases added). Thus, under this section, to recover any sort of past or future medical damages, Plaintiff, as the only party who bears a burden in this case, must prove evidence of the amount which such health care coverage is obligated to pay the health care provider to satisfy the charges, as well as her own share of medical expenses under the insurance contract or regulation and the amount for which the future charges could be satisfied if submitted to her health insurance. This is the plain reading of the statute.

In interpretating a statute, "judges must exhaust all the textual and structural clues that bear on the meaning of a disputed text." *Conage v. United States*, 346 So. 3d 594, 598 (Fla. 2022) (quoting *Alachua Cnty. v. Watson*, 333 So. 3d 162, 169 (Fla. 2022)) (cleaned up). "That is because

the plainness or ambiguity of [disputed] language is determined by reference to the language itself, the specific context in which that language is used, and the broader context . . . as a whole." *Id.* (quoting *Robinson v. Shell Oil Co.*, 519 U.S. 337, 341 (1997)) (cleaned up). Courts must also be mindful that "the meaning of a word cannot be determined in isolation, but must be drawn from the context in which it is used." *Tsuji v. Fleet*, 366 SO. 3d 1020, 1025 (Fla. 2023) (quoting *Lab'y Corp. of Am. v. Davis*, 339 So. 3d 318, 324 (Fla. 2022)). Put another way, what words "convey, in their context, is what the text means." *Coates v. R.J. Reynolds Tobacco Co.*, 365 So. 3d 353, 354 (Fla. 2023) (quoting *Levy v. Levy*, 326 So. 3d 678, 681 (Fla. 2021)).

As the Florida Supreme Court has held, the maxim that "when the language of the [disputed text] is clear and unambiguous and conveys a clear and definite meaning, there is no occasion for resorting to the rules of statutory interpretation and construction," is "misleading and outdated." *Conage*, 346 So. 3d at 598 (quoting and abrogating *Holly v. Auld*, 450 So. 2d 217, 219 (Fla. 1984)) (cleaned up). And "[i]t would be a mistake to think that our law of statutory interpretation requires interpreters to make a threshold determination of whether a term has a 'plain' or 'clear' meaning in isolation, without considering the statutory context and without the aid of whatever canons might shed light on the interpretive issues in dispute." *Id.*

Moreover, where a statute contemplates a potential outcome that directly contradicts a party's position, courts will adhere to interpretating the statute in a way that tracks the statute's contemplated outcome. *See Coates*, 365 So. 3d at 355 (finding that the party's position that the proposal for settlement statute was a prevailing-party statute to be "unreasonable" where the statute contemplated a situation where the prevailing-party could still be awarded fees).

There can be no reasonable dispute that Plaintiff has the burden to prove any recoverable damages in this case. The section simply instructs how the Plaintiff is to do so. Here, the section

states that "to prove" evidence of past medical damages when the claimant has health insurance other than Medicare or Medicaid, "evidence of the amount which such health care coverage is obligated to pay the health care provider to satisfy the charges for the claimant's incurred medical treatment or services, plus the claimant's share of medical expenses under the insurance contract or regulation." .§ 768.0427(2)(b)(1). If claimant has health insurance but is treated under a letter of protection or similar type financial agreement, Plaintiff must provide "evidence of the amount the claimant's health care coverage would pay the health care provider to satisfy the past unpaid medical charges under the insurance contract or regulation, plus the claimant's share of medical expenses under the insurance contract or regulation, had the claimant obtained medical services or treatment pursuant to the health care coverage.§ 768.0427(2)(b)(2). This language is repeated to prove future medical damages. § 768.0427(2)(c)(1).

In anticipation of the argument that the word "prove" places no burden on Plaintiff, the Court must "give the statutory language its plain and ordinary meaning, and cannot add words which were not placed there by the Legislature." *State v. Estime*, 259 So. 3d 884, 888–89 (Fla. 4th DCA 2018) (cleaned up). Black's Law Dictionary lists various dictionary examples of the word's usage, with the one most relevant defining prove as "to establish the existence, truth, or validity of (as by evidence or logic)." *Prove*, Merriam-Webster Online Dictionary, https://www.merriam-webster.com/ dictionary/prove (last visited Dec. 13, 2024). It provides the examples of "*prove* a theorem" and "the charges were never *proved* in court." *Id*. (emphasis in original.)

This definition only bolsters the plain meaning of the word "prove." If the legislature wanted to relieve a claimant of its burden "to prove" damages with this evidence, it could have used the word "show" or "demonstrate." But it chose the word "prove." *See Estime*, 259 So. 3d at 888–89 (discussing the plain meaning of the word "establish" is "to prove" and explaining if

"the legislature had intended the statute to apply only to cases where the defendant's identity was completely unknown, it could have used the word "discover," which would have limited the statute's application. However, it did not.")

At least one other court has defined the word "prove" in a similar fashion. For example, in *Riley v. Kurtz*, 361 F.3d 906, 916 (6th Cir. 2004), the court explained the definition of "prove" in *Black's Law Dictionary* is "to establish or make certain." *Id*. Applying this plain meaning, the court found a plaintiff who prevails on appeal was entitled to attorney's fees under the relevant statute "because the hours were part of proving or making certain an actual violation of the prisoner's rights. After all, if the prisoner's favorable verdict is being challenged on appeal, he is having to prove or establish his violation again, this time to a higher court." *Id.*; *see also* § 3-103. Definitions., Unif.Commercial Code § 3-103 (" 'Prove' with respect to a fact means to meet the burden of establishing the fact.")

The Court should apply the plain meaning of the word "prove" here and, in accordance with the section's use of the word "shall," require Plaintiff to admit evidence under the section to prove damages of past and future medical care.

C. Alternatively, the Court should permit Defendants to enter evidence under the section.

Alternatively, if the Court disagrees that Plaintiff must "prove" damages with the admission of evidence in accordance with section 768.0427, the Court should allow Defendants to offer evidence specifically permitted by it. The section does not provide the Court discretion to deny admission of the evidence, and states "[e]vidence offered to prove the amount of damages for past or future medical treatment or services …..is admissible." § 768.0427(2). Thus, only if the Court determines Plaintiff has no burden of proof under the section, Defendants should be permitted to admit this evidence.

CONCLUSION

For the reasons set forth above, Defendants respectfully request that the Court grant this Motion and find Plaintiff has the burden to admit evidence specified through section 768.0427, in order to prove past and future medical care damages. Alternatively, the Court should permit Defendants to offer evidence specifically permitted by section 768.0427.

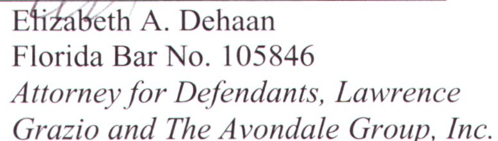
CERTIFICATE OF CONFERRAL

I certify that prior to filing this motion, Associate Attorney, Brittany Carolla, Esq, discussed the relief requested in this motion by telephone conference on September 15, 2025 with Plaintiff's counsel and Plaintiff's counsel disagrees on the facts and resolution of the motion.

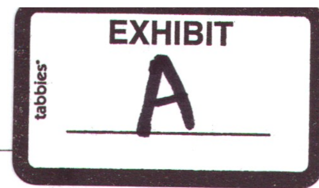
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and accurate copy of the above and foregoing has been furnished by email transmission to Randall L. Spivey, Esquire at randall@spiveylaw.com, wendy@spiveylaw.com, and andrew@spiveylaw.com, Spivey Law Firm, 13400 Parker Commons Blvd., Fort Myers, Florida 33912 and Donna M. Wilson-Sampson, Esquire at orlandolegal@farmersinsurance.com, Law Offices of Monica Burbelo Lally, P.O. Box 258829, Oklahoma City, Oklahoma 73125 on this 15 day of September, 2025.

BANKER LOPEZ GASSLER P.A.
4415 Metro Parkway, Suite 208
Fort Myers, FL 33916
Telephone: (239) 322-1300
Facsimile: (239) 322-1310
Email: service-edehaan@bankerlopez.com



BY: ______________________________
Elizabeth A. Dehaan
Florida Bar No. 105846
Attorney for Defendants, Lawrence Grazio and The Avondale Group, Inc.



1 never did, like, heavy, heavy lifting, like dead lifts
2 or anything like that, but I used a lot of the equipment
3 and a lot of the free weights. And I would go at least
4 six times a week.
5 Q Did you do that usually before or after work?
6 A I would go early in the morning or I would go
7 after work. In the mornings, I would do, like, long
8 walks, like two-hour walks.
9 Q Do you have health insurance?
10 A Yes, I do.
11 Q Through whom?
12 A United HealthCare.
13 Q And how long have you had health insurance
14 through United HealthCare?
15 A Since I started at the Dunes, which was
16 May 2023.
17 Q Before May of 2023, did you have any health
18 insurance?
19 A I did.
20 Q Through whom?
21 A Blue Cross/Blue Shield.
22 Q And how long did you have the health insurance
23 through Blue Cross/Blue Shield?
24 A July 2022 through April 2023.
25 Q And at the time of the accident, did you have