

IN AND FOR THE SIXTH JUDICIAL CIRCUIT OF FLORIDA  
IN AND FOR PINELLAS COUNTY, FLORIDA

MICHAEL K. SMART,

Plaintiff,

Case No.: 24-000060-CI

v.

Division: 13

FLORIDA FEDERAL PLAZA, LLC, a Florida corporation, J MILES CONTRACTING, LLC, a Florida corporation, JWB SYSTEMS, LLC, a Florida corporation, and IRD REMODELING SERVICES INC., a Florida corporation, SUBWAY REAL ESTATE, LLC, a foreign limited liability company, and MACSUB ENTERPRISES, INC., a Florida corporation,

Defendants.

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**ORDER GRANTING DEFENDANT'S MOTION TO COMPEL  
PLAINTIFF'S DISCOVERY RESPONSES**

THIS CAUSE, having come before the Court on October 23, 2024, on a hearing on Defendant, J MILES CONTRACTING, LLC, non-evidentiary Motion, entitled Defendants' Motion to Compel Plaintiff's Discovery Responses, and filed on July 12, 2024, in the above styled case. After review of the Motion and having heard argument of counsel for both parties, and being otherwise fully advised in the premises, The Court makes the following findings:

**INTRODUCTION**

This action arises out of a slip and fall incident that allegedly took place on September 15, 2022. 2. Plaintiff, MICHAEL K. SMART, filed his initial complaint on January 4, 2024, against former Co-Defendant Florida Federal Plaza, LLC. Defendant, J Miles Contracting, LLC, was first brought into this lawsuit following the filing of Plaintiff's First Amended Complaint on February 4, 2024. Defendant, J MILES

CONTRACTING, LLC, asks this Court to abide by Fla. Stat. § 768.0427 and compel Plaintiff's discovery responses.

### **Fla. Stat. § 768.0427**

Fla. Stat. § 768.0427(3)(e) states, “[i]n a personal injury or wrongful death action, as a condition precedent to asserting any claim for medical expenses for treatment rendered under a letter of protection, the claimant must disclose: ... Whether the claimant was referred for treatment under a letter of protection and, if so, the identity of the person who made the referral. If the referral is made by the claimant's attorney, disclosure of the referral is permitted, and evidence of such referral is admissible notwithstanding s. 90.502. Moreover, in such situation, the financial relationship between a law firm and a medical provider, including the number of referrals, frequency, and financial benefit obtained, is relevant to the issue of the bias of a testifying medical provider.” Florida legislature specifically noted Fla. Stat. § 768.0427 shall apply to causes of action filed after March 24, 2023. See Ch. 2023-15, § 30, Laws of Fla.

### **CONCLUSIONS OF LAW**

1. When “interpreting a statute, [a court’s] task is to give effect to the words that the legislature has employed in the statutory text.” *Lab Corp. of Am. v. Davis*, 339 So. 3d 318, 323 (Fla. 2022). “Where the wording of the Law is clear and amenable to a logical and reasonable interpretation, a court is without power to diverge from the intent of the Legislature as expressed in the plain language of the Law.” *State Farm Mut. Auto. Ins. v. Shands Jacksonville Med. Ctr., Inc.*, 210 So.3d 1224, 1228 (Fla. 2017).

2. This Court finds, pursuant to the plain language of Fla. Stat. § 768.0427, that 768.0427(3) applies to Plaintiff's cause of action, as Plaintiff filed his lawsuit after Fla. Stat. § 768.0427 went into effect.

3. This Court finds constitutional analysis inappropriate as Fla. Stat. § 768.0427 was intended to apply prospectively. *De La Fuente v. Fla. Ins. Guar. Ass'n*, 202 So. 3d 396, 404 (Fla. 2016).

4. Even if this Court is to analyze the constitutionality of the statute, there is a presumption that the statute is constitutional. *Planned Parenthood of Southwest & Central Fla. v. State*, 384 So.3d 67, 77 (Fla. Apr. 1, 2024) (citing *Lewis v. Leon Cnty.*, 73 So.3d 151, 153 (Fla. 2011); and *Fla. Dep't of Revenue v. City of Gainesville*, 918 So.2d 250, 256 (Fla. 2005) (“We have long recognized that ‘statutes come clothed with a presumption of constitutionality and must be construed whenever possible to effect a constitutional outcome.’”). “[T]o overcome the presumption of constitutionality, ‘the invalidity must appear beyond reasonable doubt.’” *Id.* (citing *Franklin*, 887 So.2d at 1073; *State ex rel. Flink v. Canova*, 94 So.2d 181, 184 (Fla. 1957)); *Waybright v. Duval Cnty.*, 142 Fla. 875, 196 So. 430, 432 (Fla. 1940).

5. Furthermore, to the extent there is any question, this Court must, if possible, construe 768.0427(2) to deem it constitutional. *Caple v. Tuttle's Design-Build, Inc.*, 753 So. 2d 49, 51 (Fla. 2000) (“It is a fundamental rule of statutory construction that, if at all possible, the statute should be construed to be constitutional.”); *Fla. State Bd. of Architecture v. Wasserman*, 377 So. 2d 653, 656 (Fla. 1979) (“When the constitutionality of a statute is questioned, and it is reasonably susceptible to two interpretations, by one of which it would be unconstitutional and by the other valid, a court must adopt the interpretation that will render the statute valid.”).

6. This Court finds Fla. Stat. § 768.0427 does not limit Plaintiff's access to the courts or conflict with Florida law, which already limits recovery of medical expenses in

personal injury actions to those reasonable, necessary, and related to the accident. *Albertson's, Inc. v. Brady*, 475 So. 2d 986, 988 (Fla. 2d DCA 1985).

7. This Court finds Fla. Stat. § 768.0427 does not conflict with the attorney client privilege because a Code and a Law are two completely different things. Code refers to the Florida Evidence Code: Title VII, Chapter 90. Section 90.103 dictates application of the Code, which “has been considered neither purely substantive nor purely procedural.” *DeLisle v. Crane Co.*, 258 So. 3d 1219, 1224 (Fla. 2018). *In re Florida Evidence Code*, 376 So. 2d 1161 (Fla. 1979) states that the Florida Supreme Court has “no authority to change the applicability provision [§ 90.103(2), Fla. Stat] without first finding the entire [Florida Evidence] Code to be procedural.” *Id.* at 1162.

It is hereby **ORDERED AND ADJUDGED** as follows:

1. Defendant’s Motion to Compel Plaintiff’s Discovery Responses is hereby **GRANTED**.

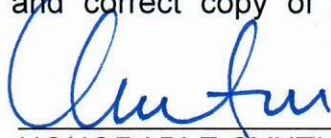
Comments:

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**DONE AND ORDERED** in Chambers in Pinellas County, Florida on this 4<sup>th</sup> day of Nov., 2024. A true and correct copy of the foregoing has been furnished to the parties listed below.



HONORABLE CYNTHIA NEWTON  
Circuit Judge

cc: James B. Thompson, Jr., Esq.  
Christopher A. Cotton, Esq.  
Terry L. Kors, Esq.  
Lawrence Imburgia, Esq.