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

ROGER SMITH,

Plaintiff,

v.

GREGORY LEWIS, WASTE PRO OF FLORIDA, INC. AND HARTFORD UNDERWRITERS INSURANCE COMPANY,

Defendants.
_____/

Case No. 2024-000583-CI

/ DENYING

ORDERXX ON DEFENDANTS GREGORY LEWIS' AND WASTE PRO OF FLORIDA INC'S MOTION TO DETERMINE ADMISSIBILITY OF MEDICAL BILLS AND SERVICES AND APPLICATION AND ENFORCEMENT OF FLORIDA STATUTE § 768.0427

THIS CAUSE came before the Court, and the Court being fully advised in the premises it is hereby:

ORDERED as follows:

1. Defendants, Gregory Lewis' and Waste Pro of Florida, Inc's Motion to Determine Admissibility of Medical Bills and Services and Application and Enforcement of Florida Statute § 768.0427 is Denied based on the reasons stated on record.

DONE AND ORDERED in Chambers at St. Petersburg, Pinellas County, Florida this _____ day of August, 2025.

Electronically Conformed 8/8/2025
Thomas Ramsberger

The Honorable Thomas Ramsberger
Circuit Court Judge

cc: Hutch Pinder, Esquire
Stephen R. Williams, Esquire
Joseph Tessitore, Esquire

Filing # 224348595 E-Filed 06/02/2025 03:24:55 PM

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

ROGER SMITH,

Plaintiff,

v.

GREGORY LEWIS, WASTE PRO OF FLORIDA, INC. AND HARTFORD UNDERWRITERS INSURANCE COMPANY,

Defendants.
_____/

Case No. 2024-000583-CI

DEFENDANT'S MOTION TO DETERMINE ADMISSIBILITY OF MEDICAL BILLS AND SERVICES AND APPLICATION AND ENFORCEMENT OF FLORIDA STATUTE § 768.0427

COMES NOW the Defendants, GREGORY LEWIS AND WASTE PRO OF FLORIDA, INC, by and through counsel undersigned and pursuant to Florida Statute § 768.0427, and hereby moves to determine the admissibility of evidence of medical treatment or service expenses, and in support thereof states as follows:

1. Florida Statute § 768.0427 became effective on March 24, 2023, with the passage and signing of House Bill 837. Said Bill made the new statute applicable to causes of action filed after the effective date of March 24, 2023.

2. The present matter was filed on February 6, 2024, making the new law clearly applicable to this case.

3. Section (2) of the statute is titled "Admissible Evidence of Medical Treatment or Service Expenses" and it provides that evidence offered to prove the amount of damages for past or future medical treatment or services in a personal injury action or wrongful death action is admissible as provided in this section.

4. Section (2) (a) limits what evidence can be offered to prove the amount of damages for past medical treatment or services to the amount actually paid, regardless of the source of the payment. Section (2) (b) 1 further provides that evidence **shall** include that if a plaintiff has health insurance, Medicare, or Medicaid, the amounts recoverable are the amounts the insurance coverage is obligated to pay plus the claimant's share of the expenses.

5. If a plaintiff treats under a Letter of Protection (LOP) or similar device the plaintiff is limited to placing into evidence the amounts that the applicable health insurance would have paid.

6. If a medical bill is subsequently sold to a third party the amount paid is admissible as evidence of the true value of the bill.

7. Pursuant to the plain language of the statute Defendant is seeking an order from the Court limiting the medical bills plaintiff may place before the jury to the amounts paid by private health insurance, Medicare, or Medicaid, or if unpaid what private health insurance, Medicare, or Medicaid would have paid.

8. To the extent that any treatment was rendered under an LOP, Defendant requests that the Court order plaintiff to comply with all the provisions of the statute governing LOPs or similar devices.

9. To the extent any medical bills were sold to a third-party defendant is seeking an order from the Court requiring Plaintiff to provide the information related to the sale, including the amount of the purchase and identify the party that the bill was transferred to by the provider.

10. It is the Plaintiff's burden to prove their case and the Plaintiff has the obligation to present evidence in compliance with the statute. Defendant seeks an order clarifying that it is the

burden of the Plaintiff to prove their damages at trial as outlined by the statute and not the Defendant's burden under Florida law.

Wherefore, Defendants hereby move the Court for an order determining the admissibility of medical expenses and services at trial and enforcing the terms of Florida Statute §768.0427.

Certificate of Conferral

Pursuant to Rule 1.202 of the Florida Rules of Civil Procedure, I certify that prior to filing this motion, I discussed the relief requested in this motion via email with the opposing counsel and the parties were not able to reach an agreement.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished via the Florida Courts E-filing Portal on this 2nd day of June, 2025 to: Hutch Pinder, Esquire, Morgan & Morgan, P.A., 111 2nd Ave NE, Suite 1600, Tampa, FL 33701 at: hutchpinder@forthepeople.com; Mlacone@forthepeople.com; hmontoya@forthepeople.com, Stephen R. Williams, Esquire, Williams & Ackley, PLC, 10820 State Road 54, Suite 202, Trinity, FL 34655 at: srw@wrplawyers.com; litigation@wrplawyers.com; tracyc@wrplawyers.com, Michael A. Kerwin, Esquire, Law Offices of Farrah C. Fugett-Mullen, 200 Colonial Center Parkway, Suite 530, Lake Mary, FL 32746 at: FloridaLawOfficeSouth@thehartford.com; Michael.Kerwin@thehartford.com.

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

CASE NO.: 24-000583-CI

ROGER SMITH,

Plaintiff,

vs.

GREGORY LEWIS AND WASTE
PRO OF FLORIDA, INC.; AND
HARTFORD UNDERWRITERS INSURANCE COMPANY,

Defendants.
_____/

PLAINTIFF'S RESPONSE TO DEFENDANT'S MOTION TO DETERMINE ADMISSIBILITY OF MEDICAL BILLS AND SERVICES AND APPLICATION AND ENFORCEMENT OF FLORIDA STATUTE § 768.0427

COMES NOW the Plaintiff, ROGER SMITH, by and through the undersigned counsel and files this response to determine the admissibility of evidence regarding Plaintiff's past and future medical expenses at the trial in this matter.

FACTUAL AND PROCEDURAL BACKGROUND

On April 28, 2023, Plaintiff, ROGER SMITH, was driving his motor vehicle on U.S. 19 N when a garbage truck driven by Defendant, GREGORY LEWIS, suddenly and without warning collided into ROGER SMITH'S vehicle by swerving into ROGER SMITH'S lane of travel. The force of the collision locked the two vehicles together. ROGER SMITH'S vehicle was totaled. The Plaintiff, ROGER SMITH, suffered catastrophic and permanent injuries as a result of the crash.

At the time of the crash Defendant, GREGORY LEWIS, was acting in the course and scope

of his employment with Defendant, WASTE PRO OF FLORIDA, INC. (hereinafter "WASTE PRO"). The garbage truck driven by Defendant, GREGORY LEWIS, was owned by Defendant, WASTE PRO.

On February 6, 2024 the Plaintiff, ROGER SMITH, filed this lawsuit seeking damages for the harm caused by the actions of both GREGORY LEWIS and WASTE PRO.

On March 24, 2023, after its passage in the Legislature, Governor DeSantis signed H.B. 837 into law. H.B. 837 includes the newly formed section 768.0427, which purports to address the admissibility of evidence that can be presented to a jury to prove past and future medical treatment. Section 768.0427(2), Fla. Stat.

ROGER SMITH'S medical treatment related to this crash includes a surgical procedure to his cervical spine in the form of C2, C3, C4, C5, C6 laminectomies, bilateral C2-3 foraminotomies, posterior instrumented fusion of C2-C3 (interfacet fusion), posterior noninstrumented DBM allograft fusion C2-C7, and posterior noninstrumented autograft fusion C2-C7. ROGER SMITH also received ongoing treatment from his medical providers and physical therapy. As of the filing of the instant response, Plaintiff's total crash-related medical expenses incurred to date are approximately $241,321.65, with those damages continuing. Plaintiff will also incur future medical expenses.

At all material times, Plaintiff had a BayCare Select Health Plan, which was billed by some providers but not by others. Plaintiff intends to provide evidence to the jury of the reasonable amounts billed to Plaintiff for medically necessary treatment or medically necessary services provided to the Plaintiff in the past, pursuant to section 768.0427(2)(b)(5). Plaintiff also intends to provide evidence to the jury of the reasonable future amounts to be billed to the claimant for medically necessary treatment or medically necessary services in the future, pursuant to section

768.0427(2)(c)(3).

However, Plaintiff will not be providing and is not required to provide any of the evidence set forth in the other paragraphs under section 768.0427(2)(b)(1-4) or section (2)(c)(1-2). By this response, Plaintiff seeks an Order from this Court holding 1) Subsections (2)(b) and (2)(c) of section 768.0427, Fla. Stat. (2024), merely sets forth lists of admissible evidence for unpaid or future medical bills; 2) Subsections (2)(b) and (2)(c) of section 768.0427, Fla. Stat. (2024), do not limit the evidence that may be offered at trial by Plaintiff. The only limitation on evidence in section 768.0427 is the limitation for paid medical bills in subsection (2)(a); and 3) Subsections (2)(b) and (2)(c) of section 768.0427, Fla. Stat. (2024), are not lists of required evidence that Plaintiff must introduce at trial.

MEMORANDUM OF LAW AND ARGUMENT

A. Section 768.0427(2) sets forth lists of admissible evidence for unpaid past medical and future medical bills, and does not limit the evidence that may be offered or require evidence that Plaintiff must introduce.

Section 768.0427(2) only sets forth lists of admissible evidence that can be used to prove unpaid or future medical bills and does not require Plaintiff to introduce any particular evidence that Plaintiff otherwise would not. "In 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).

Here, subsection (2) states: "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." Section 768.0427(2), Fla. Stat. (emphasis added). As shown above, subsection (2) uses the word "admissible." It does *not* use the word "required" or otherwise state that a plaintiff must introduce the listed evidence or else suffer a directed verdict. If the legislature

had intended such a result, it would have made that intention clear. *E.g., Crews v. State,* 183 So. 3d 329, 335 (Fla. 2015)("If the Legislature had intended such a meaning, it could easily have made such intention clear.").

For example, Florida's transitory-substance statute expressly states that "[i]f a person slips and falls on a transitory foreign substance in a business establishment, the injured person *must prove* that the business establishment had actual or constructive knowledge of the dangerous condition and should have taken action to remedy it." Section 768.0755, Fla. Stat. (2024)(emphasis added). There are no such words in subsection (2) of section 768.0427. For instance, the legislature did not write: "A party *must prove* the amount of damages for past or future medical treatment or services in a personal injury or wrongful death action as provided in this subsection." Rather, the legislature wrote: "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." Section 768.0427(2), Fla. Stat, (emphasis added).

Subsection (2) includes several subdivisions, but none provides that a plaintiff is required to introduce any particular evidence to prove unpaid medical bills or future medical bills. As shown below, subsection (2)(a) limits the evidence that may be admitted only for *satisfied* medical bills. For unpaid medical bills or future medical bills, there is no limitation. Instead, subsections (2)(b) and (2)(c) authorize certain types of evidence for unpaid medical bills or future medical bills, but do not require a plaintiff to introduce every item on the list.

Subsection (2)(b) governs unpaid medical bills and unlike subsection (2)(a), subsection 2(b) does not limit the evidence that may be admitted. Subsection (2)(b) states: "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." Section 768.0427(2)(b)

(emphasis added). Subsection (2)(b) then lists five categories of evidence that may be admitted depending on the facts of the case. Section 768.0427(2)(b)(1-5).

To make it abundantly clear that subsection (2)(b) does not limit evidence—as it expressly states—the fifth category is a catchall provision that allows a party to admit, *"Any evidence* of reasonable amounts billed to the claimant for medically necessary treatment or medically necessary services provided to the claimant." Section 768.0427(2)(b)(5)(emphasis added).

Subsection (2)(c) governs future medical bills and like subsection (2)(b) does not limit the evidence that may be admitted, as it states: "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." Section 768.0427(2)(c) (emphasis added). Subsection (2)(c) then lists three categories of evidence that may be admitted depending on the facts of the case. Section 768.0427(2)(c)(1-3) (emphasis added). Like in subsection (2)(b), the third category in subsection (2)(c) is a catchall provision that allows a party to admit *"Any evidence* of reasonable future amounts to be billed to the claimant for medically necessary treatment or medically necessary services." Section 768.0427(2)(c)(3)(emphasis added).

To be sure, subsections (2)(b) and (2)(c) use the word "shall" in the phrase "shall include, but is not limited to..." But that does not mean a plaintiff must introduce every item in the list or else suffer a directed verdict. Depending on the context in which it is used, the word "shall" can have either a permissive or a mandatory sense. *E.g., Belcher Oil Co v. Dade County,* 271 So. 2d 118, 121 (Fla. 1972)(applying "[a] permissive rather than mandatory construction" to the word "shall" in a Florida statute).

For example, the United States Supreme Court has noted that "certain of the Federal Rules use the word 'shall' to *authorize,* but *not to require,* judicial action." *De Martinez* v. *Lamagno,* 515 U.S. 417, 432 n.9 (1995) (emphasis added). Likewise, the Florida Supreme Court has recognized that "the term 'shall' can be construed as 'must' or *"may."' Allstate Ins. Co* v. *Orthopedic Specialists,* 212 So. 3d 973, 978 (Fla. 2017). Indeed, "courts in virtually every English-speaking jurisdiction have held—by necessity—that *shall* means *may* in some contexts, and vice versa." Bryan A. Gamer, *Garner's Dictionary of Legal Usage* 952 (3d ed. 2011). The Florida Supreme Court has explained that the interpretation of the word "shall" "depends upon the context in which it is found and upon the intent of the legislature as expressed in the statute." *S.R. v. State,* 346 So. 2d 1018, 1019 (Fla. 1977).

There are three contextual reasons why the word "shall" should be construed in its permissive, not mandatory sense:

1. As noted above, subsection (2) merely states that the listed evidence is "admissible." It does *not* use the word "required" or otherwise state that a plaintiff must introduce the listed evidence or else suffer a directed verdict.
2. The last category of admissible evidence under subsections (2)(b) and (2)(c) are catchall provisions that allow a party to admit *"Any evidence…"* of reasonable amounts billed or to be billed. Section 768.0427(2)(b)(5) and (2)(c)(5), Fla. Stat. (emphasis added). It would not make sense to interpret subsections (2)(b) and (2)(c) as setting forth required lists of evidence when one of the items on the lists is open-ended. To read either of these subsections as a required list would mean that a plaintiff would need to introduce every possible form of evidence, which is an absurd result. "Where a statute is open to multiple interpretations, Florida courts endeavor to avoid

interpretations which would lead to absurd results." *Hardee County v. FINR II, Inc.,* 221 So. 3d 1162, 1165 (Fla. 2017).

3. The word "shall" appears in the phrase "shall include, but is not limited to." It is well settled that "[t]he verb *to include* introduces examples, not an exhaustive list." Antonin Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts* § 15, at 132 (2012). Although the mere use of the word "include" is sufficient to convey a non-exhaustive list, adding the phrase "but is not limited to" further emphasizes the point. *E.g., White v. Mederi Caretenders Visiting Servs. Of Se. Fla., LLC,* 226 So. 3d 774, 783 (Fla. 2017)("The qualifying phrase 'includes, but is not limited to' made clear that the Legislature intended to allow the protection of more interests than simply those set Forth in the non-exhaustive list."). Because the lists in subsections (2)(b) and (2)(c) are not an exhaustive list, they should not be construed as lists of required evidence.

This Court should also keep in mind that the legislature did not write subsections (2)(b) and (2)(c) on a blank slate. To the contrary, "the common law can, and sometimes must, inform the proper understanding of a statutory text." *C.N.* v. *I.G.C.,* 316 So. 3d 287, 290 (Fla. 2021). Indeed, the Florida Supreme Court has recognized "the importance of reading statutes with an awareness of and sensitivity to background common law rules," and it has explained that "[c]ommon law rules might also inform the correct interpretation and application of statutory provisions themselves." *Ripple v. CBS Corp.,* 385 So. 3d 1021, 1028 (Fla. 2024).

Here, the relevant common law rule is the evidentiary collateral-source rule. It provides that "payments from collateral source benefits are not admissible because such evidence may confuse the jury with respect to both liability and damages." *Joerg v. State Farm Mat. Auto Ins.,* 176 So. 3d 1247, 1249 (Fla. 2015). For example, courts have applied the collateral-source rule to

exclude evidence of insurance benefits. *Id.,* at 1249. Courts have also applied the collateral-source rule to exclude "evidence of social legislation benefits such as those received from Medicare, Medicaid, or Social Security." *Id.,* at 1250 (collecting cases).

The legislature acted against this backdrop when it enacted subsections (2)(b) and (2)(c) of section 768.0427. Indeed, whereas the collateral-source rule would have excluded evidence of insurance, subsections (2)(b) and (2)(c) now authorize in certain circumstances the admission of evidence of what insurance is obligated to pay for medical bills. Similarly, whereas the collateral-source rule would have excluded evidence of Medicare or Medicaid benefits, subsection (2)(b)(3) and (2)(c)(2) now authorize in certain circumstances the admission of "evidence of 120 percent of the Medicare reimbursement rate…" or "170 percent of the applicable state Medicaid rate…" Section 768.0427(2)(b)(3) and (2)(c)(2), Fla. Stat.

In short, subsections (2)(b) and (2)(c) were enacted to supersede the evidentiary collateral source rule in certain circumstances and render *admissible* certain evidence that would have otherwise been excluded by the rule. This understanding further demonstrates that subsections (2)(b) and (2)(c) do not set forth lists of evidence that a plaintiff is *required* to introduce or else suffer a directed verdict.

Another relevant background principle of law is "the general canon of evidence that any fact relevant to prove a fact in issue is admissible into evidence unless its admissibility is precluded by some specific rule of exclusion." *Williams* v. *State,* 110 So. 2d 654, 658 (Fla. 1959). If the legislature intended to overrule that principle of common law, it needed to do so clearly. *E.g.,* Antonin Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts* § 52 (2012) ("A statute will be construed to alter the common law only when that disposition is clear."). "The presumption is that no change in the common law is intended unless the statute is explicit and clear

in that regard. Unless a statute unequivocally states that it changes the common law or is so repugnant to the common law that the two cannot coexist, the statute will not be held to have changed the common law." *Thornber v. City of Ft. Walton Beach,* 568 So. 2d 914, 918 (Fla. 1990); *accord Emerson* v. *Lambert,* 374 So. 3d 756, 768 n.15 (Fla. 2023)

As the Florida Supreme Court has explained, "a material variation in terms suggests a variation in meaning." *Thompson* v. *DeSantis,* 301 So. 3d 180, 186 (Fla. 2020). Accordingly, the fact that the legislature expressly limited the evidence for paid medical bills in subsection (2)(a), but did not do so for unpaid medical bills in subsection (2)(b) or future medical bills in subsection (2)(c), indicates that there is no limitation on evidence for unpaid or future bills. *See, e.g., USAA Cas. Ins. V. Emergency Physicians, Inc.,* 393 So. 3d 257, 261 (Fla. 5th DCA 2024) ("[W]hen the legislature includes particular language in one section of a statute but not in another section of the same statute, the omitted language is presumed to have been excluded intentionally." (citation omitted)).

Any contrary reading would render useless the catchalls in subsections (2)(b)(5) and (2)(c)(3). After all, these remaining categories capture every possible factual circumstance. If Plaintiff were limited to one of the categories, then what would be the purpose of the catchalls? "[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." *State* v. *Knighton,* 235 So. 3d 312, 316 (Fla. 2018)(citation omitted). Courts are "required to give effect to 'every word, phrase, sentence, and part of the statute, if possible, and words in a statute should not be construed as mere surplusage.'" *Id.* (citation omitted).

Other courts have looked at this issue and have adopted the Plaintiff's view of this statute. Plaintiff would direct the Court to the following Orders attached to this Motion as composite Exhibit A, some of which include:

- In the case of *Morales v. Reeb and Lessen, Inc.*, Case No. 2023-CA-016933 (May 7, 2025, Judge Alissa Ellison adopted Jude James Daniel's April 21, 2025 order in *Cheryl A. Beyenka v. Jean Pyle*, No. 20230CA-009204 (Fla. 4th Cir. Ct. (Duval)) and further found "Defendants argued that the word "shall" in subsections (2)(b) and (2)(c) of the statute create a burden on the plaintiff. However, Defendants' reading is inconsistent with the catch-all provisions in subsections (2)(b)5 and 2(c)3., which allow a party to introduce "[a]ny evidence" of reasonable amounts.

- In the case of *Beyenka v. Pyle*, Case No. 2023-CA-009204 (April 21, 2025), Judge James H. Daniel found that section 768.0427(2) does not create a burden of production on the plaintiff and does not limit evidence of unpaid past medical bills.

- In the case of *Steiger v. Murali, et al*., Case No. 2023-CA-482 (Nov. 20, 2024), Judge David Frank found that Plaintiff was entitled to present evidence of the full amount of her past and future medical bills, and that subsection (2)(b) and (2)(c) did not impose an additional burden on the plaintiff to prove anything else.

- In the case of *Grant v. Cartwright*, Case No. 23002644-CA (Feb. 25, 2025), Judge Geoffrey H. Gentile found that Plaintiff is not required to prove Medicare numbers pursuant to the subject statute, and that while Defendant could admit such evidence, Plaintiff was not required to do so.

In alignment with the courts above, this Court should find that section 768.0427(2)(b) and (2)(c) do not limit the evidence that may be offered by Plaintiff to prove her past or future medical bills, nor do these sections require that Plaintiff present any of the other lists of evidence to prove either her past or future medical bills.

B. If this Court were to adopt an interpretation that section 768.0427(2) requires Plaintiff to introduce the lists of evidence it sets forth, such an interpretation would be error.

If this Court were to interpret subsections (2)(b) and (2)(c) as setting forth lists of evidence that Plaintiff is required to introduce or else suffer a directed verdict (which it should not), then the statute would be untenable. Providing such evidence, especially as to future medical bills,

would be impossible , as by its very nature it involves information that is not readily available to a plaintiff or that is unknowable.

For example, in the case of a plaintiff having heath care coverage, subsection (2)(b)(l) refers to "…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..." Section 768.0427(2)(b)(l), Fla. Stat. Similarly, subsection (2)(b)(2) refers to "…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…" Section 768.0427(2)(b)(2), Fla. Stat. Yet, subsection (2)(e) states that "[i]ndividual contracts between providers and authorized commercial insurers or authorized health maintenance organizations *are not subject to discovery or disclosure and are not admissible into evidence*." Section 768.0427(2)(e)(emphasis added)

The question then becomes for a plaintiff with health insurance coverage: How can a plaintiff prove the amount her health care insurer "is obligated to pay" or "would pay" the health care provider when the contract between the insurer and the provider is not admissible? The answer is that Plaintiff is not and cannot be required to introduce such evidence. To hold otherwise would violate Plaintiff's constitutional right of access to courts because it would impose a "significantly difficult" procedural hurdle. *See generally T.A. Enters., Inc. v. Olarte, Inc.,* 931 So. 2d 1016, 1018 (Fla. 4th DCA 2006)("To find a violation of the right of access, 'it is not necessary for [a] statute to produce a procedural hurdle which is absolutely impossible to surmount, only one which is significantly difficult.'" (citation omitted).

Regarding future damages, there is no competent evidence to admit as to what amounts a health insurance provider, Medicare, or Medicaid will pay in the future. Nobody knows or can

know. All of that will depend on whatever policy or statutory/code language is in place at the time, whether a provider is in-network or out-of-network, what discounts (if any) are negotiated between the provider and carrier or the government for a particular service or procedure, how much the carrier or government initially accepts or denies, and the result of any necessary challenge or appeals if coverage is wrongfully denied.

It is one thing to reduce awards by benefits that have already been provided, as section 768.76, Fla. Stat., already requires collateral source benefits with no right of subrogation or reimbursement. There is no speculation required there because the parties know what has been paid. But it is an entirely different thing to try and predict what health insurance or the government can, might, or must do in the future.

Florida Supreme Court precedent is clear that an error in admitting collateral source evidence is not harmless, as a matter of law, if the result of the trial is either a defense verdict on liability or the award of less medical damages than sought by the plaintiff. *See Sheffield v. Superior Ins. Co.*, 800 So. 2d 197, 203-04 (Fla. 2001)(concluding it was clear error for trial court to deny plaintiffs motion in limine to preclude evidence of plaintiffs group medical insurance benefits, and the error was not harmless where the jury awarded less than the full amount of future medical expenses sought); *Gormley v. GTE Prods. Corp.*, 587 So. 2d 455, 457-58 (Fla. 1991) (holding that the trial court erred in overruling the plaintiffs' objection to evidence they received via insurance benefits for property damage, and a new trial was warranted because the evidence prejudiced the jury as to liability).

Thus, any ruling where Plaintiff would be required to present evidence of Health Insurance rates as to past medical expenses would be in direct violation of established precedent and current Florida statutory law. Further, if this Court ruled that Plaintiff was required to produce evidence

as to any alleged future health insurance, Medicare, or Medicaid rates, such requirement would be impossible for the Plaintiff to comply with. As addressed above, a violation of a plaintiff's constitutional right of access to courts is found when the law would impose a "significantly difficult" procedural hurdle. *See Olarte, supra*. A ruling from the Court imposing such a restriction as addressed above would do just that and is unwarranted.

CONCLUSION

For all the reasons set forth above, Plaintiff respectfully requests this Court grant his Motion and find:

- Subsections (2)(b) and (2)(c) of section 768.0427, Fla. Stat. (2024), merely set forth lists of admissible evidence for unpaid or future medical bills;
- Subsections (2)(b) and (2)(c) of section 768.0427, Fla. Stat. (2024), do not limit the evidence that may be offered at trial by Plaintiff. The only limitation on evidence in section 768.0427 is the limitation for paid medical bills in subsection (2)(a).
- Subsections (2)(b) and (2)(c) of section 768.0427, Fla. Stat. (2024), are not lists of required evidence that Plaintiff must introduce at trial

CERTIFICATE OF CONFERRAL IN COMPLIANCE WITH FLA. R. CIV. P. 1.202

I certify that prior to filing this motion, I discussed the relief requested in this motion by [method of communication and date] with the opposing party and [the opposing party (agrees or disagrees) on the resolution of all or part of the motion].

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been e-filed via the Florida E-Portal on July 17, 2025, with a copy to all counsel of record.

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

CASE NO. 2024-000583-CI

ROGER SMITH,

Plaintiff,

v.

GREGORY LEWIS, WASTE PRO OF FLORIDA, INC., AND HARTFORD UNDERWRITERS INSURANCE COMPANY,

Defendants.
_____/

REMOTE HEARING PROCEEDINGS

DEFENDANT'S MOTION FOR SUMMARY JUDGMENT

DATE TAKEN: MONDAY, JULY 28, 2025

TIME: 1:45 P.M. - 2:20 P.M.

BEFORE: THE HONORABLE THOMAS RAMSBERGER

LOCATION: PINELLAS COUNTY COURTHOUSE
REMOTELY VIA TELECONFERENCE

Stenographically Reported Via Teleconference by:
Sherri L. England, Stenographer

Job No. 408793

APPEARANCES: (Via Teleconference)

APPEARING ON BEHALF OF THE PLAINTIFF:

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The following proceedings began at 1:45 p.m.:

THE COURT: Okay, folks. This is Judge Ramsberger; Case Number 24-0583. We have counsel on for the Plaintiff Roger Smith?

MR. PINDER: We do, Your Honor. Good afternoon. This is Hutch Pinder on behalf of the Plaintiff Roger Smith.

THE COURT: Good afternoon.

How about for the two Defendants, Waste Pro and Gregory Lewis?

MR. TESSITORE: Yes, Your Honor. Joe Tessitore on behalf of the Defendants.

THE COURT: Good afternoon.

And how about for Hartford?

MR. PINDER: They are no longer a party to the case, Your Honor.

THE COURT: Okay. Hartford's out.

All right. Okay. All right. Do we have a court reporter today?

MR. TESSITORE: Yes, Judge.

THE STENOGRAPHER: Yes, Your Honor, this is Sherri England with Lexitas here for Mr. Tessitore.

MS. FERRARA: Sorry, Judge, this is

Terry Ferrara (ph). I was hired by Mr. Pinder but I was waiting for him to join. Mr. Pinder, Mr. Tessitore hired Sherri with Lexitas so we don't need two, right?

THE COURT: All right, Mr. Pinder, you want to agree, it's defense's motion, let them go ahead and just keep their court reporter for today?

MR. PINDER: Yes, Your Honor.

THE COURT: All right. So we'll go ahead and keep the court reporter Sherri ordered by Mr. Tessitore. The other court reporter, we'll let you go for the day. Have a good rest of your day and stay safe.

MS. FERRARA: Thank you, sir. You, too.

MR. WILLIAMS: Also, Your Honor, making an appearance as co-counsel Steve Williams for the Plaintiff.

THE COURT: All right. Good afternoon. Mr. Pinder, are you arguing or Mr. Williams today?

MR. PINDER: I will be arguing today, Your Honor. This is Mr. Pinder.

THE COURT: Wonderful. And is there anybody else on the call that we missed?

MR. TESSITORE: Not that I'm aware of, Judge.

THE COURT: Counsel, you have a trial set two weeks from today. With regard to the Motion for Summary Judgment, it says filed May 27. Defense, is that the date of your motion to be heard today?

MR. TESSITORE: I will verify that, Judge. Yes, my motion was filed according to my certification of service, I'm looking for it, 27th of May, Your Honor.

THE COURT: All right. It's document number 96. And that relates to Waste Pro and Gregory Lewis, correct?

MR. TESSITORE: Yes, Your Honor.

THE COURT: All right. Counsel, as you present, and again we only have 30 minutes so please be efficient and divide your time equally; please let me know whatever evidence you're proffering. I want to make sure that I admit it into evidence.

Also, I keep track because as you know I can only make a ruling today based upon

the evidence that's in front of me. Once the hearing is complete, I'll have defense counsel file a notice with the clerk whatever evidence came in for the Defendant -- Defendants, and then the same Mr. Pinder, for the Plaintiff, a notice with the clerk. That way the clerk can make a duplicate copy into an evidence file the same as if I were to stamp them.

Since the documentation was required to already be in the case file it should have a document number next to it. You don't need to duplicate a copy. It just needs to have the document number. And if the document number contains more than one document, we'll just clarify for that.

For defense, I have your motion in front of me. Go ahead and make your argument. Then we'll hear a response from Plaintiff.

MR. TESSITORE: Yes, Judge. Just quickly one administrative matter. Do you show only one motion today or two?

THE COURT: Hearing on Defendant's Motion for Summary Judgment. Is there two

that's been filed?

MR. TESSITORE: I thought there was a second one on determine admissibility of medical bills. And if not, we'll re-set that, I guess.

THE COURT: On May 27, which is document 96, let me just be clear here. Yep, document 96. I've got that in front of me. It says Motion for Summary Judgment for Waste Pro of Florida, Inc.

MR. TESSITORE: Yes, sir.

THE COURT: That's the only one that I see on the 27th. Did your notice include a separate motion?

MR. TESSITORE: I think we had filed a separate motion which we also noticed for today, but if Your Honor does not have that on, we understand and we'll just argue this S.J. motion.

THE COURT: Okay. What's the date of that other motion just to be clear?

MR. TESSITORE: Yes. The date of that other motion was June 2, 2025.

THE COURT: Again, I just don't see it on mine, which means my judicial assistant

doesn't have it noticed.

MR. TESSITORE: I understand.

THE COURT: That doesn't mean that it might not want to be noticed.

Determine admissibility.

MR. TESSITORE: Yes, Judge.

THE COURT: Mr. Tessitore, I don't want to get ahead of myself, but is admissibility the same as summary judgment? It sounds to me like that's a motion in limine.

MR. TESSITORE: Yeah, it's probably a motion in limine but I tried to get ahead of that, Judge, because I'm not trying to sandbag the Plaintiff and it may be an issue Your Honor has already ruled on and I'm not aware of. It's asking Your Honor to apply the new tort statute to limit Plaintiff to putting into evidence what health insurance would have paid or what Medicaid would have paid, and if Your Honor -- or Medicare. If Your Honor has already ruled on that, then that may be a moot point.

THE COURT: What do you mean ruled, in this case or other cases?

MR. TESSITORE: Other cases, if Your

Honor has already ruled on how to apply the statute, I can look at other cases and then not waste the Court's time with that and just raise a motion at the time of trial for preserving a record.

THE COURT: You're welcome to. If time permits, you can have it heard today. Otherwise, it won't be heard today.

MR. TESSITORE: I understand.

THE COURT: It's more akin to a motion in limine. Usually Thursdays before your trial is set aside for motions in limine but you have to get on the docket.

Counsel, go ahead and present on your Motion for Summary Judgment. We'll hear a response from Plaintiff.

MR. TESSITORE: Yes, Judge. It's based on basically legal argument and not really a bunch of evidence for the Court to consider. This is a negligence action against Waste Pro's driver and Waste Pro --

THE COURT: Let me interrupt you. Counsel, let me interrupt you. Are you stipulating that there is no issue of any fact that's going to be argued by counsel

today?

MR. TESSITORE: I'm not aware of him arguing that my driver was not an employee at Waste Pro and I am not aware of him arguing that he was not in the course and scope. Mr. Pinder can speak to that if he's agreeable to those two things, there really isn't any factual disputes that I'm aware of.

THE COURT: Mr. Pinder.

MR. PINDER: I am not disputing --

THE COURT: Go ahead.

MR. PINDER: I apologize, Your Honor. I am not disputing course and scope or that driver was responsible as Mr. Tessitore pointed out.

THE COURT: Okay. So out of the summary judgment, two issues to establish for the movant. I guess in this case would be Defendant, no genuine issue or dispute of material fact and judgment as a matter of law so again, Counsel, you're telling me that facts are not in dispute, okay, no dispute.

And with regard to this motion for

Waste Pro, is it fully dispositive for Waste Pro or is it a partial summary judgment that you're looking for?

MR. TESSITORE: It's a partial, Judge, and the motion should have said partial and that's my error and I apologize to the Court.

THE COURT: Okay. Go ahead and argue the legalities and then we'll hear a response from Plaintiff.

MR. TESSITORE: Yes, Your Honor. This concerns the liability of Waste Pro for its employee. Waste Pro, the complaint alleges that the driver was in the course and scope and that also alleges that Waste Pro is vicariously liable for their driver based on a dangerous instrumentality argument and also on a respondeat superior because it's their employee.

Waste Pro has admitted not that their driver was negligent, but has admitted that he was in the course and scope and therefore if he were liable because he was in the course and scope, Waste Pro obviously would be liable for the negligence of its

employee, which remains to be proven.

So the issue becomes what we can be sued for under a -- and I think Plaintiff is correct in suing us under a negligence theory for dangerous instrumentality because we own the vehicle, that is not in question, and also we're responsible for our employee under respondeat superior, but Plaintiff has also filed a count for negligent hiring, negligent training and negligent supervision and negligent management, and we are moving for summary on those claims because we believe the case law is clear in Florida that where a company has an employee that's a driver and they're liable vicariously for that driver arising out of a motor vehicle accident, they cannot be sued for these additional claims of negligent hiring, negligent training, negligent supervision because in a sense those are superfluous claims. They don't bring any additional causes of action to bear, to recover from the employer and in fact would be prejudicial to the employer if placed before the jury, the evidence to support those

claims, and the case law says where those claims are made, it's really just a duplication of the liability already.

And in other words, if my driver was negligent, we would be vicariously liable for that driver, and therefore there would be no need for any other cause of action. And it can be an alternative cause of action in certain circumstances, but those circumstances are limited under the case law.

For example, if Waste Pro were to allege or claim that our driver was outside the course and scope of employment and did something, you know, wrong, we can't escape liability if in fact the Plaintiff could show we were negligent in our hiring and negligent in our supervision. If we argued that we weren't vicariously liable, those would be valid causes of action or if the Plaintiff had asserted a punitive damage claim, then those causes of action might be relevant to the punitive damage claim. But on a straight basic motor vehicle negligence cause of action, the only valid claims are

dangerous instrumentality and/or vicarious liability for your employee and we think that's what the case law holds.

And that's just a brief summary, Judge, of the defense argument. I'll save the rest for rebuttal.

THE COURT: Mr. Pinder, your response? Go ahead.

MR. PINDER: Thank you, Your Honor.

Count IV in the Plaintiff's complaint is a distinctive theory of liability and we object to summary judgment on those grounds as the defense has put forth because it's separate and apart from Count III, respondeat superior claim, and I need to briefly go through some background information because it's important as to why that claim should go forward and why it is separate and distinct.

The Defendant, Mr. Lewis, the Defendant driver told us that before his employment with Waste Pro, he was convicted of multiple felonies; in his words, quote, too many to count. They consisted of burglary, credit card fraud, possession of a firearm,

operating a drug house, possession of controlled substance, possession of marijuana, and a few driving without a license.

He also told us that when he obtained his commercial driving license, he failed the written portion of the exam before passing, and that prior to his employment with Waste Pro, he worked for the City of Gulfport where he drove a garbage truck into a parked car.

And then he also, to cap all that off, told us that just a few months before this crash occurred in November of 2022, he was fired from his job at the City of Gulfport where he drove a garbage truck because he was arrested on a warrant while he was at work and that warrant was for stalking, improper exhibition of a firearm, violation of a domestic violence warrant. And within just three months of all that, he starts his job at Waste Pro.

And Mr. Lewis is quite candid in terms of the employment process when Waste Pro hired him. He said, quote, besides me

having my license, they, meaning Waste Pro, didn't say nothing, end quote.

He also said that he wasn't planning on filling out an application because he didn't want to waste Waste Pro's time or his, and in his words he said: So whatever, they said I qualified, and I applied for the job.

He then also shared that when he underwent training at Waste Pro, the vehicle that he trained on was very different than the garbage truck he would drive on a daily basis and in his words, quote, they, meaning Waste Pro, moved pretty quickly and threw me in the truck. And he also shared that he was not comfortable when he began driving for Waste Pro.

And finally, on this background information, at the time of the crash, Mr. Lewis was wearing air pods or a music listening device in violation of Florida 316.304 statute.

We knew that because we have video of the crash itself and also the inside of the vehicle when the crash occurred.

The Court's very well aware of the

summary judgment standard. The case that the defense relies upon in their Motion for Summary Judgment is several decades old and dates ten years before Florida adopted the comparative fault statute.

This is significant in terms of the background information because Waste Pro should have direct liability for their negligence in hiring Lewis, failing to train Lewis, and failing to properly supervise their driver. The negligent entrustment claim would subject Waste Pro to additional liability over and above its liability for simply allowing Lewis to drive, and the jury could reasonably conclude that Waste Pro was in a distinctly superior position to know and recognize the hazards associated with placing an ill-trained employee into a hazardous position.

Waste Pro's admission of agency does not supplant the claim that Waste Pro caused or contributed to the Plaintiff's injuries. The jury should be allowed to assess the full value of Waste Pro's negligence and Waste Pro cannot shield their total acts of

negligence and the information I went through just by simply admitting to the course and the scope.

Both the agent and the principal are subject to suit for their own respective negligence and that's why we moved forward in Count IV, which the defense has now moved for summary judgment on. And we request the Court deny the Defendant's motion.

THE COURT: Mr. Tessitore, going back to you for a very quick rebuttal of anything I haven't already heard.

MR. TESSITORE: Yes, Judge.

THE COURT: Honed in on counts -- Plaintiff's counsel honed in on Count IV. I didn't hear it as part of your argument and I've done my best to read your motion. Is Count IV and the conclusion thus Waste Pro's entitled to summary judgment as to Count IV, is Count IV the only requested relief under your motion today?

MR. TESSITORE: Yes, Judge.

THE COURT: All right. A quick rebuttal. Go ahead, Counsel.

MR. TESSITORE: Yes, everything that

Plaintiff's counsel argued frankly is irrelevant because here is why, Judge. If this driver was not negligent in the operation of his vehicle, Waste Pro cannot be liable for negligent hiring, negligent retention, negligent supervision because they don't -- they can't be vicariously liable for those things and the case law is crystal clear on this, Judge, and although counsel indicates it may be older case law, it's still good case law and the reason given the courts in the case law that we've cited is fairly clear, in every case it would open the door to basically attacking the employers the decision to employ the person, which doesn't go to the dispositive issue in a vicarious liability claim. There is no separate cause of action because it doesn't provide any recovery over and above what is already available; ultimately end of the day, Waste Pro driver has to be negligent in the operation of his vehicle and if he was, they will obtain all their damages via that vicarious liability vehicle and the other causes of action are

superfluous to this caution of action; therefore, it's redundant, it's duplicative and it's not permissible under the case law, and we believe the case law is crystal clear on this issue.

THE COURT: Mr. Tessitore, have you had a full opportunity to argue your motion today?

MR. TESSITORE: Yes, Your Honor. Thank you.

THE COURT: Mr. Pinder, a full opportunity to respond to their motion?

MR. PINDER: Yes, Your Honor. Thank you.

THE COURT: Okay. Well argued, Counsel. I'm denying the Motion for Summary Judgment, partial summary judgment as to Count IV. I believe that Plaintiff may proceed with an alternate theory.

Again, I understand the arguments from defense counsel regarding vicarious liability. The Plaintiff has pled it separately and so that count will stand unless you-all stipulate to something different.

Mr. Tessitore, if you could please prepare an order from today. The order is going to say denied for the reasons stated on the record if that works for you.

MR. TESSITORE: That works for me, Your Honor.

THE COURT: Does that work for Mr. Pinder?

MR. PINDER: Yes, Your Honor.

THE COURT: Okay. And again, Mr. Tessitore, anything else that you believe the Court should address in that order today?

MR. TESSITORE: No, Your Honor.

THE COURT: All right. I'm going to ask that you run a draft by Plaintiff and then upload it within two business days from today. Plaintiff, Mr. Pinder, anything else to address in that order today?

MR. PINDER: No, sir. Your Honor.

THE COURT: Okay. I don't think -- and again back to your question, Mr. Tessitore -- I'm sorry -- Mr. Pinder, was the other motion noticed for today?

MR. TESSITORE: I thought it was, Your

Honor. I'm sorry. I didn't mean to interrupt.

MR. PINDER: Your Honor, there was an amended notice for hearing that included both motions that was filed subsequent to the original motion, so yes, it was noticed on the amended notice of hearing.

THE COURT: All right. Mr. Pinder, no objection taking that motion up then?

MR. PINDER: No, Your Honor. And then as long as we can work within the time parameters because it could be -- I don't know how long we'll need to argue this motion because it does contain substantial issues that require both parties to cover some ground.

THE COURT: Okay. And again the filing date on that motion, Mr. Tessitore?

MR. TESSITORE: Yes, Judge. That was June -- let me get to the -- it was filed on June 2, Your Honor.

THE COURT: All right. 6/2 of '25 and then again that's document number 100 and again, Counsels, yes, I've got 2:03. You're done at 2:15 today. There is another

hearing at 2:15, so I'd ask that you be really efficient with your arguments.

Defense, if you'd like to go ahead and argue that. And by the way, Mr. Tessitore, I don't have any independent recollection, and again, I'm like, you folks, you folks can go and research it, figure out what I have done, what other judges have done, if that's any type of influence from a precedential standpoint. It really doesn't matter what my colleagues do around the state. If it's an appellate court tells us some direction, then that's fine, but go ahead and argue whatever it is in your motion, hopefully enough time for Plaintiff to respond.

MR. TESSITORE: Yes, Judge. I'll be brief. This concerns application of the new tort statute 768.0427 which is titled: Admissibilty of evidence to prove medical expenses in personal injury or wrongful death actions; disclosures of letter of protection and recovery of past, future medical expense damages. I would direct the Court's attention to section 2(b), which I

think is the first section that I wanted to bring to the Court's attention. It deals with admissible evidence of medical treatment or service expenses. And (b) states the following: 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 provided -- as provided in this paragraph.

And so we have unpaid medical charges in this case and therefore sub (b) I believe is operative for those unpaid expenses and would -- under sub (b) we have sections 1, 2, 3, 4 and 5. I think that section 2 or section 3 applies to this case. Sub 2 or sub 3 because they deal with insurance. Sub 2 deals with if you have health care coverage. Here the Plaintiff had coverage through the V.A., and then sub 3 deals with if a claimant has no health care coverage or health care coverage through Medicare or Medicaid. I think he's 81 years old; therefore he's technically under Medicare so either 2 applies or 3 applies and 2 and 3

both hold that where there is unpaid medical bills, the amount that should go into evidence before the jury is the amount either what the insurance paid or 120 percent of what Medicare would have paid.

That being said, I acknowledge that section 5, sub 5 of the same section of this statute says: Any evidence of reasonable amounts billed to the claimant for medically necessary treatment or medically necessary services provided to the claimant.

I believe Plaintiff's position is that that means, sub 5, they're allowed to put in all the amount of the medical bills that were unpaid, the full amount.

I understand that interpretation. I disagree with it but I know courts around the state have agreed with that argument, but my argument is that sub 2 says that the amount offered into evidence shall include, but is not limited to, and then sub 1 -- or sub 1 and 2 deal with whether you have insurance or not.

My reading of the statute it shall include what insurance paid, but it also can

include the LOP amounts that Plaintiff wants to put in evidence. By the fact that the section of the statutes say -- it specifically says but not limited to means it shouldn't be limited to any one of those things if there is evidence under any of the other sections.

So I think the Plaintiff has to put in what health insurance or Medicare would have paid, but they're also allowed to put into evidence what the actual unpaid amounts are. And that's my position, and I'm asking the Court for an interpretation of the statute and how the Court intends to apply the statute at trial so I can advise my client accordingly.

THE COURT: And to be clear, you don't have any appellate case law that sheds light on your inquiry?

MR. TESSITORE: I do not, Judge. In fact I searched this statute right before coming on the hearing and there is not a single DCA case on point. I filed some orders interpreting the statute the way I interpreted it. I know opposing counsel has

a number of orders that he's filed from a different interpretation so I didn't know if Your Honor had already ruled on it or not so I figured I'd bring it to the Court's attention.

THE COURT: Well, before I hear from Mr. Pinder, in any of those orders that defense or plaintiff raise from trial court level, do you see my name on any of those?

MR. TESSITORE: I do not, Judge.

THE COURT: Okay. Mr. Pinder, if you'd like to go ahead and argue your response, go ahead, please.

MR. PINDER: Yes, thank you, Your Honor, and I'm going to try and do this as quickly as I possibly can, but I do have some ground to cover and I will be done within the time constraints provided by the Court.

Significantly, in this case, the Plaintiff, Roger Smith, I am not aware of any letters of protection that he executed. He had a BayCare Health Select plan. That's a Medicare plan and when we talk about this statute, this statute is not one that limits

evidence. It's a statute for admissibility. It says that in the very preamble of section 2. Evidence is admissible. And so that's what we're dealing with here, and the statute does not create a burden of production.

When we look at the statutory language, it's clear, my understanding we're talking about bills that have not been paid. There is a limitation as to the actual amounts paid for what has been handled leading up to the point of the trial but at this stage for unpaid bills, the statute tells us that if any evidence of reasonable future amounts to be billed to the claimant for medically necessary treatment or medically necessary procedures.

It sets forth admissible evidence for unpaid and future bills but does not limit the evidence that may be offered at trial. And that's also why we see the subsections that are found within the statute itself and I'll touch upon that in a moment.

If the legislature attempted to require the plaintiff to limit and produce certain

materials, they would have done so and spoken clearly and made their intent clear. For example, in Florida's transitory substance statute it tells us, quote: The injured person must prove that the business establishment had constructive knowledge of the dangerous condition.

There are no such words in the Florida Statute 768.0427. The legislature did not write, quote, a party must prove the amount of damages for past or future medical treatment. And that's why we also see the subsections located within there specifically providing that any evidence of reasonable amounts billed. And we see that twice for both the past and the future medical bills. They are to be presented in evidence.

The additional information the Court should take into consideration, the catch-all provisions apply to any evidence and to read otherwise would require the Plaintiff to introduce every possible form of evidence, which would be an absurd result. And if we look at the common law,

we know of Joerg v. State Farm, 176 So.3d 1247, provides for set-offs after trial because that information can confuse the jury.

When we talk about future medical expenses, the challenge then if you took defense's interpretation, the Plaintiff would be required to set forth evidence of what health insurance would pay in the future between an agreement between the insurance company and the provider, and that would make the statute untenable because that info is not readily known to the Plaintiff or the defense. And that is not what the legislature intended. Essentially you would then create a trial within a trial.

The specific statute sets forth information that the defense may be able to provide and point out to the jury, and then the jury can make the assessment based on the plaintiff's expert; the plaintiff has a medical billing expert in this case that has been disclosed, and the defendant disclosing their medical billing expert, and to hold

otherwise to take the defense position which has been recognized by some courts and we also have the plaintiff's position it has been recognized by other courts that are not binding on this Court. I am not aware of an appellate opinion, but essentially it would violate the Plaintiff's constitutional right to access the court because it would create a very significant difficult procedural hurdle.

And I could go on and on. I know we have time constraints. I want to stay within those, but essentially this is a rule of admissibility in terms of what the Plaintiff can -- and the Defendant can now produce to the jury. It is not a statute that limits or requires the Plaintiff to introduce certain materials.

Thank you, Your Honor.

THE COURT: Mr. Tessitore, very quickly, if I'm looking at your prayer for relief. You have that in front of you?

MR. TESSITORE: Yes, Your Honor.

THE COURT: Okay. And it indicates here that you would like the Court -- it

says here an order to determine the admissibility of medical expenses and services at trial. Well --

MR. TESSITORE: Correct.

THE COURT: -- again, I don't mean to be redundant but this is a motion in limine. It's not a summary judgment motion.

MR. TESSITORE: Right. I agree with that, Your Honor.

THE COURT: Okay. And secondly, I don't know how I can make -- how I can rule on evidence unless the evidence is in front of me so that's problematic from the second standpoint. However, I think what you're trying to ask me in so many words is a preliminary ruling on how I interpret what's been argued under 768.0427 with regard to whether shall means mandatory and it shifts the burden onto the Plaintiff on certain evidence, or if it's still left to the phrase any evidence that's interpreted by the courts; would that be an accurate summation of the issue that you want me to decide for you?

MR. TESSITORE: I think that's

accurate, Judge. Also to the extent that it's obviously waiting until trial on a motion in limine if, for example, Your Honor were to hold that Plaintiff did not have to do that but I would be permitted to do that, I would need to have the appropriate witness there to put that on. That's why I'm trying to do this in advance of the trial.

THE COURT: What I'm trying to explain to you is motions in limines are on Thursdays before my trial week and --

MR. TESSITORE: Understood.

THE COURT: -- this motion would be appropriate for that hearing date, not now.

MR. TESSITORE: Understood, Your Honor.

THE COURT: Counsel, I often get attorneys that will call something a motion in limine that reads an awful lot like a Daubert motion so I don't mind giving you my ruling. I don't limit the Plaintiff under this statute. I don't believe shall as being mandatory. In fact, Counsels, I'm of the opinion, and I don't mind sharing this with you, I think the legislature deals with substantive law and the rules of evidence

and procedure are left for the Supreme Court. And unless until the Florida Supreme Court has a rule of evidence that this Court is to follow, go ahead and do that. Otherwise I'll follow substantive law by the legislature.

Still this statute that you referred to much has been written about it, much has been argued, and I'm likewise, unless an appellate court tells me that it's limiting in nature, then I tend to give the Plaintiff as well as the Defendant every broad opportunity in the rules of evidence to present their case to a jury.

Mr. Tessitore, your motion is denied for the reasons stated on the record. Anything else to address under that motion?

MR. TESSITORE: Not on the motion, Your Honor. I just had a housekeeping matter when you're done.

THE COURT: Mr. Pinder, anything else to address under that order today?

MR. PINDER: No, Your Honor.

THE COURT: Okay. Mr. Tessitore, 2:15, what else do you have?

MR. TESSITORE: Judge, I had filed a Notice of Trial Conflicts pursuant to the Rules of Judicial Administration. I just wanted to remind the Court that I brought that up at the pretrial conference. Your Honor had told me to file the appropriate notice of conflict under the Rules of Judicial Administration. I wanted the Court to know that I did that.

THE COURT: Thank you very much. And if you've got other cases that are older than this set for trial?

MR. TESSITORE: Yes, sir.

THE COURT: Okay. So this would be a newer of the older case?

MR. TESSITORE: Yeah. I have -- I have a number of cases that were older, but I can represent to Your Honor that a couple of those have settled since I filed that notice and I intend to file an amended, so as it sits now I have two that are currently scheduled for trial in August that are much older than this case.

THE COURT: August the 11th?

MR. TESSITORE: I have August -- I

have -- excuse me. I have August 11, August 18, and August 25 are all calendar -- on the calendar and so I'm figuring that two of these may go during that time period, but yes, August the 11th is one of them that is set for that time period.

THE COURT: Well, you're to be clear, if you have a conflict on August the 11th, fine. It sounded like the other two trials are after August 11?

MR. TESSITORE: No.

THE COURT: Don't have a bearing on this case.

MR. TESSITORE: Sure, Your Honor. I have -- well, that's right. You only have one trial week; is that correct, Your Honor?

THE COURT: This is set for five days beginning August the 11th.

MR. TESSITORE: Yeah, and my understanding is you don't have a subsequent trial week on the 18th, correct?

THE COURT: Counsel, I never do.

MR. TESSITORE: I didn't know.

THE COURT: Any preferences and look at my trial docket, any time you see a two-week

trial docket, those are not separate weeks. Those are select a jury on the first Monday, and in case, for example, medical malpractice, nursing home negligence, cases that usually take more than five days, it allows for that second week. So we don't have a select a jury on one Monday and then select a jury on the subsequent. That's a two-week trial docket, not two separate one weeks.

So, Counsel, if I hear you correctly, you have one conflict on August the 11th; is that correct?

MR. TESSITORE: As I look right now, Judge, yes, I have one conflict on the 11th.

THE COURT: That's fine. And again, as long as you're following all of the essential requirements under the Rules of Judicial Administration and you're welcome to put -- give information to my judicial assistant about who the judge is in that case and vice versa, that way when the timing is right that judge and I can talk about it. It's no secret that usually the older case goes first. However, judges

often talk and there might be various reasons where that judge may say let the Roger Smith case go before this one or vice versa, but, Counsel, that's why my calendar call for the week of August 11th is the Friday before.

If there still maintains a conflict and we haven't addressed it ahead of time, by all means raise it. Counsel, we often wait because of the exactly what you just said. You have four cases that are down to two, right, or five down to four or something like that?

MR. TESSITORE: Yes, Your Honor.

THE COURT: So the point being is there is still time in the next two weeks for some movement in those other cases and/or this case. So this one will remain on the docket.

Having said that if you would like another judge than myself to discuss it, glad to do it and just provide information to both of the judicial assistants so that we can coordinate an appropriate time, not next week, but probably the following week.

Mr. Tessitore, anything else today?

MR. TESSITORE: Understood, Your Honor. No, sir. Thank you for that guidance.

THE COURT: More than welcome.

Mr. Pinder, anything else on your end today?

MR. PINDER: No, Your Honor.

THE COURT: All right. Mr. Defense Counsel, Mr. Tessitore, two motions today. Please upload them both to JAWS in two business days. And, Counsel, just a quick reminder since you're on my trial docket, the only way to remove you is a notice of voluntary dismissal, all parties and all claims or some type of order ratifying a settlement agreement that would close the case.

Counsel and court reporter, have a great rest of your day and stay safe.

(Proceedings concluded at 2:19 p.m.)

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C E R T I F I C A T E

STATE OF FLORIDA)
COUNTY OF ORANGE)

I, SHERRI L. ENGLAND, STENOGRAPHER, certify that I was authorized to and did stenographically report the foregoing proceedings and that the transcript is a true record.

Dated this 11th day of August, 2025.

SHERRI L. ENGLAND, STENOGRAPHER

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