

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

ROGER SMITH,

Case No. 2024-000583-CI

Plaintiff,

v.

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

Defendants.

/ DENYING

**ORDER 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

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

ROGER SMITH,

Case No. 2024-000583-CI

Plaintiff,

v.

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

Defendants.

**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.

/s/ Joseph D. Tessitore _____

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Attorney for Defendants Lewis and Waste Pro

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. Garner, *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 Judge 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 health care coverage, subsection (2)(b)(1) 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)(1), 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
REMOVED VIA TELECONFERENCE

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

Job No. 408793

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13 APPEARING ON BEHALF OF DEFENDANTS GREGORY LEWIS AND
14 WASTE PRO:

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

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

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

9 THE COURT: Good afternoon.
10 How about for the two Defendants, Waste
11 Pro and Gregory Lewis?

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

14 THE COURT: Good afternoon.
15 And how about for Hartford?

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

18 THE COURT: Okay. Hartford's out.
19 All right. Okay. All right. Do we
20 have a court reporter today?

21 MR. TESSITORE: Yes, Judge.

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

25 MS. FERRARA: Sorry, Judge, this is

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

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

10 MR. PINDER: Yes, Your Honor.

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

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

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

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

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

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

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

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

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

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

17 MR. TESSITORE: Yes, Your Honor.

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

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

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

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

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

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

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

1 that's been filed?

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

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

11 MR. TESSITORE: Yes, sir.

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

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

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

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

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

1 doesn't have it noticed.

2 MR. TESSITORE: I understand.

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

5 Determine admissibility.

6 MR. TESSITORE: Yes, Judge.

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

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

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

25 MR. TESSITORE: Other cases, if Your

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

6 THE COURT: You're welcome to. If time
7 permits, you can have it heard today.

8 Otherwise, it won't be heard today.

9 MR. TESSITORE: I understand.

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

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

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

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

1 today?

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

10 THE COURT: Mr. Pinder.

11 MR. PINDER: I am not disputing --

12 THE COURT: Go ahead.

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

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

25 And with regard to this motion for

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

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

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

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

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

1 employee, which remains to be proven.

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

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

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

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

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

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

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

9 MR. PINDER: Thank you, Your Honor.

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

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

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

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

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

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

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

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

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

17 And finally, on this background
18 information, at the time of the crash,
19 Mr. Lewis was wearing air pods or a music
20 listening device in violation of Florida
21 316.304 statute.

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

25 The Court's very well aware of the

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

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

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

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

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

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

13 MR. TESSITORE: Yes, Judge.

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

22 MR. TESSITORE: Yes, Judge.

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

25 MR. TESSITORE: Yes, everything that

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

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

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

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

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

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

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

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

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

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

7 THE COURT: Does that work for
8 Mr. Pinder?

9 MR. PINDER: Yes, Your Honor.

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

14 MR. TESSITORE: No, Your Honor.

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

20 MR. PINDER: No, sir. Your Honor.

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

25 MR. TESSITORE: I thought it was, Your

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

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

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

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

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

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

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

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

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

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

1 think is the first section that I wanted to
2 bring to the Court's attention. It deals
3 with admissible evidence of medical
4 treatment or service expenses. And (b)
5 states the following: Evidence offered to
6 prove the amount necessary to satisfy unpaid
7 charges for incurred medical treatment or
8 services shall include, but is not limited
9 to, evidence provided -- as provided in this
10 paragraph.

11 And so we have unpaid medical charges
12 in this case and therefore sub (b) I believe
13 is operative for those unpaid expenses and
14 would -- under sub (b) we have sections 1,
15 2, 3, 4 and 5. I think that section 2 or
16 section 3 applies to this case. Sub 2 or
17 sub 3 because they deal with insurance. Sub
18 2 deals with if you have health care
19 coverage. Here the Plaintiff had coverage
20 through the V.A., and then sub 3 deals with
21 if a claimant has no health care coverage or
22 health care coverage through Medicare or
23 Medicaid. I think he's 81 years old;
24 therefore he's technically under Medicare so
25 either 2 applies or 3 applies and 2 and 3

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

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

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

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

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

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

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

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

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

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

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

10 MR. TESSITORE: I do not, Judge.

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

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

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

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

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

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

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

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

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

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

1 we know of Joerg v. State Farm, 176 So.3d
2 1247, provides for set-offs after trial
3 because that information can confuse the
4 jury.

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

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

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

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

19 Thank you, Your Honor.

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

23 MR. TESSITORE: Yes, Your Honor.

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

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

4 MR. TESSITORE: Correct.

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

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

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

25 MR. TESSITORE: I think that's

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

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

12 MR. TESSITORE: Understood.

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

15 MR. TESSITORE: Understood, Your Honor.

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

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

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

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

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

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

23 MR. PINDER: No, Your Honor.

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

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

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

13 MR. TESSITORE: Yes, sir.

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

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

24 THE COURT: August the 11th?

25 MR. TESSITORE: I have August -- I

1 have -- excuse me. I have August 11, August
2 18, and August 25 are all calendar -- on the
3 calendar and so I'm figuring that two of
4 these may go during that time period, but
5 yes, August the 11th is one of them that is
6 set for that time period.

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

11 MR. TESSITORE: No.

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

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

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

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

22 THE COURT: Counsel, I never do.

23 MR. TESSITORE: I didn't know.

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

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

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

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

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

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

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

14 MR. TESSITORE: Yes, Your Honor.

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

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

1 Mr. Tessitore, anything else today?

2 MR. TESSITORE: Understood, Your Honor.

3 No, sir. Thank you for that guidance.

4 THE COURT: More than welcome.

5 Mr. Pinder, anything else on your end
6 today?

7 MR. PINDER: No, Your Honor.

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

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

20 (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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