IN THE CIRCUIT COURT IN AND FOR
PALM BEACH COUNTY, FLORIDA

CIRCUIT CIVIL DIVISION: "AK"
CASE NO.: 50-2024-CA-004255-XXXA-MB

BRANDON TOVAR,
Plaintiff/Petitioner
vs.
JUDITH ANGIE ESTEBANEZ,
SOUTH FLORIDA PIZZA LLC,
DESTYN ALEXANDER ESTEBANEZ,
Defendant/Respondents.
_____/

ORDER DENYING MOTION IN LIMINE REGARDING PROOF OF PAST AND FUTURE MEDICAL EXPENSES

THIS CAUSE came before the Court for review on September 30, 2025. The Court requested proposed orders but is entering its own order instead, obviating the need for proposed orders. Based upon review of the Motion in Limine Regarding Proof of Past and Future Medical Expenses, a complete review of the court file, and the Court being otherwise fully advised in the premise, the Court finds as follows:

1. This is a standard auto negligence claim. As relayed by the parties, Plaintiff had insurance and/or Medicare during his treatment but elected to treat under a letter of protection.

2. Defendant has asked this Court to order that before Plaintiff may "board" any amount of economic damages to the jury, he must first "submit into evidence 120 percent of the Medicare reimbursement rate in effect at the time of trial...[or] 170 percent of the applicable state Medicaid rate for any past and future medical charges." *See Motion in Limine*, at 3. Defendant contends this is a condition precedent that must first be satisfied before the Plaintiff may seek to recover medical expenses at trial.

3. Defendant's position is premised on the language of section 768.0427, Florida Statutes, which was implemented as part of the comprehensive Tort Reform.

4. As with all things statutory, the Court begins its analysis with the plain language of the statute. *See Newborn v. Isbell*, 165 So. 3d 16, 18 (Fla. 1st DCA 2015) ("The proper determination of a statute's meaning begins with the plain language of the statute, which is the best evidence of legislative intent.").

5. Subsection 768.0427(2) provides "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." *See* §768.0427(2). Paragraph 2(a) is not relevant here, but essentially provides that where the bills have been paid, only the amount actually paid is admissible.

6. Where Plaintiff's medical bills remain outstanding, "[e]vidence 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 the provisions that follow. *See* §768.0427(2)(b). The remaining provisions, summarized, list "the amount the claimant's health care coverage would pay the health care provider to satisfy the past unpaid medical charges," "evidence of 120 percent of the Medicare reimbursement rate...[or] 170 percent of the applicable state Medicaid rate," and any evidence "a third party paid or agreed to pay the health care provider in exchange for the right to receive payment pursuant to the letter of protection."

7. Finally, subparagraph 768.0427(2)(b)(5) includes "[a]ny evidence of reasonable amounts billed to the claimant for medically necessary treatment or medically necessary services provided to the claimant."

8. In regard to future medical expenses, paragraph 2(c) provides that "evidence shall include, but is not limited to, evidence as provided in this paragraph." The subparagraphs, like the ones pertaining to past medical expenses provide:

> 1. If the claimant has health care coverage other than Medicare or Medicaid, or is eligible for any such health care coverage, evidence of the amount for which the future charges of health care providers could be satisfied if submitted to such health care coverage, plus the claimant's share of medical expenses under the insurance contract or regulation.
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> 2. If the claimant does not have health care coverage or has health care coverage through Medicare or Medicaid, or is eligible for such health care coverage, evidence of 120 percent of the Medicare reimbursement rate in effect at the time of trial for the medical treatment or services the claimant will receive, or, if there is no applicable Medicare rate for a service, 170 percent of the applicable state Medicaid rate.
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> 3. Any evidence of reasonable future amounts to be billed to the claimant for medically necessary treatment or medically necessary services.

8. Defendant seizes upon the language in Paragraphs 2(b) and 2(c) which states "shall include, but is not limited to, evidence as provided in this paragraph" to argue that before Plaintiff can claim any amount of medical expenses it must put forth the categories of evidence listed in the subparagraphs of 2(b) and 2(c).

9. Defendant is correct that a strict interpretation of the phrase "shall include" would convey that Plaintiff is required to put on proof of all of the subcategories of evidence listed in the subparagraphs of 2(b) and 2(c). However, as pointed out by the late Justice Scalia, the preferred method of interpretation is not strict construction but a "fair reading":

> A text should not be construed strictly, and it should not be construed leniently; it should be construed reasonably, to contain all that it fairly means.
>
> Antonin Scalia, *A Matter of Interpretation: Federal Courts and the Law*, 23 (Princeton Univ. Press 1998).

10. "...[T]he 'fair reading' method does not countenance a hyperliteral reading of a legal text." *See USAA Cas. Ins. Co. v. Mikrogiannakis*, 342 So. 3d 871, 874 (Fla. 5th DCA 2022) (citing Antonin Scalia & Bryan A. Garner, *Reading the Law: The Interpretation of Legal Texts* 39 (1st Ed. 2012). "[A] fair reading considers the purpose of the text, gathered only from the text itself, consistently with the other aspects of its context." *Id.*(internal punctuation omitted).

11. Looking at the statute as whole, it is apparent that a "fair reading" of the provision is that "shall include, but is not limited to" is meant to convey that all of subcategories of documents are admissible in evidence, not that they all must be presented by the Plaintiff.

12. First, the "not limited to" language signals permissibility rather than a mandatory condition. If "shall include" is to be read as "must submit" it would make no sense to immediately expand the field of documents that must be submitted by adding the "not limited to" clause.

13. Additionally, section 768.0427(2)(b)(5) includes within the "shall include but is not limited to" group "[a]ny evidence of reasonable amounts billed to the claimant for medically necessary treatment or medically necessary services provided to the claimant." Again, this is expansive, not constrictive language. This provision would be rendered nonsensical if Plaintiff were required to present "any evidence of reasonable amounts." That category of evidence is entirely unascertainable and would effectively mean all evidence in existence. Plaintiff could never satisfy such a condition precedent.

14. A more logical reading of the "any evidence" subparagraph is that all the preceding forms of evidence are permissible methods of proving damages and the "any evidence" provision is a catchall that makes other unenumerated forms of evidence permissible, subject to the rules of evidence.

15. Further supporting the conclusion that subsection 768.0427(2) does not create a condition precedent as alleged by Defendant is the fact that subsection (3) does **expressly** create a condition precedent. *See* §768.0427(3), Fla. Stat. ("In a personal injury or wrongful death action, as a condition precedent to asserting any claim for medical expenses or treatment rendered under a letter of protection...").

16. This provision shows the Legislature knows how to establish a condition precedent when it wants to, so by omitting it from the relevant subsection, it intended something different. *See Rollins v. Pizzarelli*, 761 So. 2d 294, (Fla. 2000) (recognizing that courts may look to other statutes to determine the Legislature knows how to accomplish what was omitted from the subject statute as evidence it means something different); *Cason v. Fla. Dept. of Mgmt. Svcs.*, 944 So. 2d 306, 315 (Fla. 2006) ("In the past, we have pointed to language in other statutes to show that the Legislature 'knows how to' accomplish what is has omitted in the statute in question.").

17. If the Legislature meant for subparagraph 2(b) to create a condition precedent, it knows how to do so.

18. For decades, Defendants in personal injury actions fought to no avail to introduce into evidence the amount of the medical bills actually paid or payable at a discounted rate (as distinguished from the amount billed). *See Goble v. Frohman*, 901 So. 2d 830 (Fla.

2005); *Cooperative Leasing v. Johnson*, 872 So. 2d 956 (Fla. 2d DCA 2004); *Thyssenkrupp v. Lasky*, 868 So. 2d 547 (Fla. 4th DCA 2003); *Nationwide Mut. Fire Ins. Co v. Harrell*, 53 So. 1084 (Fla. 1st DCA 2010). Defendant, here, appears to contend that in enacting the Tort Reform bill, the Legislature swung to the other extreme by severely limiting the evidence Plaintiff can present. In reality, the language of the statute, when given a fair reading, indicates the Legislature took a moderate approach, expanding the forms of admissible evidence but not restricting Plaintiff only to the amount payable.

ORDERED AND ADJUDGED that the Motion in Limine Regarding Proof of Past and Future Medical Expenses is DENIED.

DONE AND ORDERED in Chambers, at West Palm Beach, Palm Beach County, Florida.

50-2024-CA-004255-XXXA-MB 10/02/2025
James Sherman Judge

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