APPLICATION FOR NOMINATION TO THE CIRCUIT COURT, SEVENTH JUDICIAL CIRCUIT

Instructions: *Respond fully to the questions asked below. Please make all efforts to include your full answer to each question in this document. You may attach additional pages, as necessary, however it is discouraged. In addition to the application, you must provide a recent color photograph to help identify yourself.*

Full Name: Christopher Kelly **Social Security No.:** [redacted]

Florida Bar No.: 0061697 **Date Admitted to Practice in Florida:** 9/29/1995

1. Please state your current employer and title, including any professional position and any public or judicial office you hold, your business address and telephone number.
   State of Florida
   Volusia County Court Judge
   101 N. Alabama Ave.
   DeLand, FL 32724
   386-822-5016

2. Please state your current residential address, including city, county, and zip code. Indicate how long you have resided at this location and how long you have lived in Florida. Additionally, please provide a telephone number where you can be reached (preferably a cell phone number), and your preferred email address.

   Residential Address: [redacted]

   Cell Phone: [redacted]

   Time at residence: 9 months
   Florida resident: 53 years

   Preferred Email: [redacted]

3. State your birthdate and place of birth.
DOB: 10/21/1968
POB: Daytona Beach, FL

4. Are you a registered voter in Florida (Y/N)?
Yes

5. Please list all courts (including state bar admissions) and administrative bodies having special admissions requirements to which you have ever been admitted to practice, giving the dates of admission, and if applicable, state whether you have ever been suspended or resigned. Please explain the reason for any lapse in membership.

The Florida Bar
Member: September 29, 1995 – Present

United State District Court, Middle District of Florida
Member: April 2005 – 2011
Did not renew membership after 2011

6. Have you ever been known by any aliases? If so, please indicate and when you were known by such alias.
"Chris" Kelly

EDUCATION:

7. List in reverse chronological order each secondary school, college, university, law school or any other institution of higher education attended and indicate for each the dates of attendance, whether a degree was received, the date the degree was received, class standing, and graduating GPA (if your class standing or graduating GPA is unknown, please request the same from such school).

University of Florida College of Law, 1992 – 1995
Juris Doctor, May 1995
GPA 2.80 / Class Rank 140/198

Florida State University, 1987 & 1988–1990
Bachelor of Science, August 1990
GPA 3.00 / Class Rank – Requested

Daytona Beach Community College, 1983 & 1986 -1988
Associate of Arts, December 1988

United States Military Academy
Congressional Nomination, 1986
Admitted, July 1996
Honorable Discharge received before academic classes commenced due to complications from Asthma

Fr. Lopez Catholic High School, 1982 – 1986
High School Diploma

8. List and describe any organizations, clubs, fraternities or sororities, and extracurricular activities you engaged in during your higher education. For each, list any positions or titles you held and the dates of participation.

University of Florida, College of Law

Honor Committee
Advisor 1994-1995

University Elections Commission
Commissioner 1995

John Marshall Bar Association
Member 1992-1995
Class Representative 1992-1994
President 1995

Incoming Student Orientation and Advisor Program
Program Coordinator 1993-1995

Council of Ten
Torts Teaching Fellow

Florida Blue Key
Member, installed 1995

Florida State University

Sigma Phi Epsilon Fraternity
Pledge, 1989

EMPLOYMENT:

9. List in reverse chronological order all full-time jobs or employment (including internships and clerkships) you have held since the age of 21. Include the name and address of the employer, job title(s) and dates of employment. For non-legal employment, please briefly describe the position and provide a business address and telephone number.

Volusia County Court Judge January 2013 – present
101 North Alabama Avenue
DeLand, FL 32724

Office of the State Attorney, Seventh Judicial Circuit
Managing Assistant State Attorney, January 2011 – December 2012
Public Information Officer, January 2009 – December 2011
251 North Ridgewood Avenue
Daytona Beach, FL 32114

Crotty Bartlett & Kelly, P.A. (n/k/a Crotty & Bartlett, P.A.)
Partner/Associate, June 2003 – January 2009
(Last operating address – firm dissolved)
1540 Cornerstone Boulevard
Suite 230
Daytona Beach, FL 32114

Office of the State Attorney, Seventh Judicial Circuit
Assistant State Attorney, August 2000 – June 2003
251 North Ridgewood Avenue
Daytona Beach, FL 32114

Florida League of Cities, Inc.
Assistant General Counsel, June 1999 – August 2000
301 South Bronough Avenue
Suite 300
Tallahassee, FL 32301

Office of the State Attorney, Seventh Judicial Circuit
Assistant State Attorney, August 1995 – June 1999
251 North Ridgewood Avenue
Daytona Beach, FL 32114

County of Volusia, County Attorney's Office
Summer Intern, May – August 1994
123 West Indiana Avenue
DeLand, FL 32720

Law Offices of Frederick C. Morello, P.A.
Summer Intern, June – August 1993
111 North Frederick Avenue
2nd Floor
Daytona Beach, FL 32114

Office of the State Attorney, Seventh Judicial Circuit
Summer Intern, May – August 1993
251 North Ridgewood Avenue
Daytona Beach, FL 32114

Treasure Island Inn (No longer in business)
Event Manager/Front Desk Clerk, 1990-1992 & 1993
2025 South Atlantic Avenue
Daytona Beach Shores, FL 32118
General Manager at time of employment:
Bob Davis: 386-299-0771

Jon Hall Chevrolet
Sales Associate, 1990
551 North Nova Road
Daytona Beach, FL 32114
Sales Manager at time of employment:
Freda Pennington: 386-527-1229

Florida Department of Commerce, Bureau of Visitor Services
(Department dissolved – duties of Bureau subsumed by "Visit Florida")
Information Specialist (OPS), 1988-1990
Tallahassee, FL 32399
Duties included:

- Answering a visitor's information phone line
- Providing information regarding destinations across the State of Florida
- Facilitating the distribution of the official State of Florida Visitor's Guide and brochures as requested for specific locations or activities in Florida.
- Staffing the Official State of Florida Welcome Center located with the State Capitol
- Conducting visitor tours of the Florida State Capitol

10. Describe the general nature of your current practice including any certifications which you possess; additionally, if your practice is substantially different from your prior practice or if you are not now practicing law, give details of prior practice. Describe your typical clients or former clients and the problems for which they sought your services.

Volusia County Court Judge
January 2013- present

As a Volusia County Court Judge, I spent the first eight years of my tenure primarily assigned to a civil division. In county civil, I presided over a wide variety of matters including, small claims disputes, traffic and ordinance violations, landlord-tenant cases, breach of contract actions, foreclosures, construction lien litigation, as well as almost any other type of civil litigation where the amount in controversy did not exceed $30,000 ($15,000 prior to January 1, 2020).

In January of 2021, I rotated to a criminal division. In this division, I now preside over all types of misdemeanor cases such as DUI's and other criminal traffic matters, domestic violence, and thefts. I have handled motions to suppress, motions to dismiss, bond hearings, and other similar matters, all while managing a sizeable caseload of several hundred cases.

From January 2015 through the latter part of 2017, I presided over a permanent circuit court docket handling all family law cases in the Southern and Western Divisions of Volusia County pertaining to Repeat Violence, Dating Violence, Sexual Violence and Stalking Injunctions.

Additionally, the ten County Court Judges in Volusia are primarily responsible for conducting weekday first appearances, rotating the duty on a weekly basis.

Office of the State Attorney, Seventh Judicial Circuit
Managing Assistant State Attorney
January 2011 – December 2012

As Managing Attorney, I supervised 23 felony attorneys. The attorneys were assigned to several divisions within the office, including felony intake, general felony trial, drug unit, sex crimes and special prosecutions. I also supervised 30 support staff which included secretaries, victim advocates and witness managers. Most of my day as a Managing Attorney was spent conferring with prosecutors on cases to assist them in case evaluation and trial strategy.

Office of the State Attorney, Seventh Judicial Circuit
Public Information Officer
January 2009 – December 2011

As Public Information Officer ("PIO") my primary function was to collect, verify and disseminate information to the public through effective communication with the media on a circuit-wide basis. As PIO, I was directly involved in the discussion and evaluation of all major cases across the circuit as well as the development of office policy. As a member of the Office's Executive Staff, I met with the State Attorney, Chief Assistant, and Chief Investigator on a regular basis.

Crotty, Bartlett & Kelly, P.A. n/k/a Crotty & Bartlett, P.A
Partner/Associate
June 2003 - January 2009

I was initially hired by Crotty & Bartlett as a litigation associate. I became a partner in the firm in June of 2005. As a partner, I had the opportunity to gain an understanding and appreciation of the issues faced by solo and small-firm practitioners related to law office management.

At the onset of my employment with the firm, I primarily assisted Laurence H. Bartlett with numerous complex litigation matters, including challenging a trust agreement executed under undue influence, and successfully litigating the enforcement of a restrictive covenant in an employment agreement.

In 2005, I became a partner in the firm and soon expanded my practice to include estate planning with a focus on elder law. I also handled a variety of other matters to include probate, general business law, condominium & homeowner associations, real estate, landlord-tenant, employment agreements and general civil litigation.

In addition to clients that sought my advice and services for elder law and estate planning issues, the clients that I regularly performed services for included car dealerships, banks, condominium and homeowner associations.

Office of the State Attorney, Seventh Judicial Circuit
Assistant State Attorney
September 2000 - May 2003; August 1995 - June 1999

As an Assistant State Attorney, I had the opportunity to spend time handling a variety of cases in almost every division of the State Attorney's Office. I started my career in the Juvenile Division in 1995. In 1996, I was transferred to the Domestic Violence Division and assigned to the specialized Domestic Violence Court. In the latter part of 1996, I was transferred to a misdemeanor docket until I was promoted to a Felony Trial position in 1997. In 1998, I was assigned to the felony intake division, where I also served from 2000-2002. As a felony intake attorney, I conscientiously tried to ensure I had all necessary information available to me before making case filing decisions.

In 2003, I was promoted to supervisor of the Drug Unit, where I supervised two assistant state attorneys and was personally responsible for all facets of prosecuting drug trafficking cases. In all of these positions, except for felony intake where my court appearances were more limited, I appeared in court on a near-daily basis handling arraignment hearings, bond hearings, other miscellaneous motion hearings, and jury and non-jury trials.

Florida League of Cities, Inc.
Assistant General Counsel
June 1999 - August 2000

As Assistant General Counsel, I regularly consulted with city attorneys from across the State of Florida on legal issues. In keeping informed of the challenges facing our members and representing their interests, I routinely traveled across the state to Ft. Lauderdale, Naples, Orlando, Jacksonville, Pensacola, and at times, even back home to Daytona Beach. While in Tallahassee, I put my prosecutorial experience to good use as an advisor to the League's Special Investigation Unit ("SIU"). The SIU investigated suspected insurance fraud on behalf of the League's insurance trust and was called upon to evaluate issues related to claims presented to the insurance trust. I also routinely reviewed draft of contracts with hotels and entertainers the League was considering for major conferences.

Another responsibility involved moderating a legislative policy committee comprised of elected municipal officials, managers, and administrators. I was assigned to the Urban Administration Committee, which encompassed fire safety codes, building and construction codes, code enforcement, elections, eminent domain, homeland security, personnel and collective bargaining issues, public meetings, public property management, public safety, sunshine law, utilities, and telecommunication.

The Committee developed a Legislative Action Agenda setting forth the priorities of the League for each legislative session. I was then responsible for representing the interests of municipal governments by meeting with members of the Florida Legislature and administrative agencies and testifying before legislative committees on issues important to Florida's cities. Similarly, I was responsible for monitoring the legislative process and analyzing the impact of proposed state legislation on municipalities.

11. What percentage of your appearance in court in the last five years or in the last five years of practice (include the dates) was:

Court		Area of Practice	
Federal Appellate	0 %	Civil	70 %
Federal Trial	0 %	Criminal	20 %
Federal Other	0 %	Family	5 %
State Appellate	0 %	Probate	0 %
State Trial	100 %	Other	5 %
State Administrative	0 %		
State Other	0 %		

TOTAL	100 %	TOTAL	100 %

If your appearance in court the last five years is substantially different from your prior practice, please provide a brief explanation:

12. In your lifetime, how many (number) of the cases that you tried to verdict, judgment, or final decision were:

* Includes cases litigated as an attorney and presided over as a judge

Jury?	20 (estimated)*	Non-jury?	500 (estimated)*
Arbitration?	0	Administrative Bodies?	0
Appellate?	1		

13. Please list every case that you have argued (or substantially participated) in front of the United States Supreme Court, a United States Circuit Court, the Florida Supreme Court, or a Florida District Court of Appeal, providing the case name, jurisdiction, case number, date of argument, and the name(s), e-mail address(es), and telephone number(s) for opposing appellate counsel. If there is a published opinion, please also include that citation.

None.

14. Within the last ten years, have you ever been formally reprimanded, sanctioned, demoted, disciplined, placed on probation, suspended, or terminated by an employer or tribunal before which you have appeared? If so, please state the circumstances under which such action was taken, the date(s) such action was taken, the name(s) of any persons who took such action, and the background and resolution of such action.

No.

15. In the last ten years, have you failed to meet any deadline imposed by court order or received notice that you have not complied with substantive requirements of any business or contractual arrangement? If so, please explain full.

No.

16. For your last six cases, which were tried to verdict or handled on appeal, either before a jury, judge, appellate panel, arbitration panel or any other administrative hearing officer, list the names, e-mail addresses, and telephone numbers of the trial/appellate counsel on all sides and court case numbers (include appellate cases). *This question is optional for sitting judges who have served five years or more.*

As a sitting judge for five years or more, I will defer to my answers in latter questions related to judicial experience.

17. For your last six cases, which were either settled in mediation or settled without mediation or trial, list the names and telephone numbers of trial counsel on all sides and court case numbers (include appellate cases). *This question is optional for sitting judges who have served five years or more.*

As a sitting judge for five years or more, I will defer to my answers in latter questions related to judicial experience.

18. During the last five years, on average, how many times per month have you appeared in Court or at administrative hearings? If during any period you have appeared in court with greater frequency than during the last five years, indicate the period during which you appeared with greater frequency and succinctly explain.

Over the last five years, I have appeared in court almost daily.

19. If Questions 16, 17, and 18 do not apply to your practice, please list your last six major transactions or other legal matters that were resolved, listing the names, e-mail addresses, and telephone numbers of the other party counsel.

As a sitting judge for five years or more, I selected the option to defer answering questions 16 & 17 in deference to latter questions specifically related to judicial experience.

20. During the last five years, if your practice was greater than 50% personal injury, workers' compensation or professional malpractice, what percentage of your work was in representation of plaintiffs or defendants?

Not applicable.

21. List and describe the five most significant cases which you personally litigated giving the case style, number, court and judge, the date of the case, the names, e-mail addresses, and telephone numbers of the other attorneys involved, and citation to reported decisions, if any. Identify your client and describe the nature of your participation in the case and the reason you believe it to be significant.

i. ***Dolores J. Roach v. Virginia R. Urban and Grizzley's Bar & Grill, Inc.***
Volusia Clerk No.: 2006 32210 CICI
Circuit Court in and for Volusia County, Florida
Judge: Richard S. Graham (Case settled without court appearance)
Complaint filed: December 14, 2006
Opposing Counsel: **Walter J. Snell (Limited Appearance)**
Snell & Snell, P.A.
snellandsnell@mindspring.com
386-255-5334

This is a case that I litigated to settlement and the entry of a stipulated Final Judgment for monetary damages of $192,191.88 on behalf of my client Dolores J. Roach.

In July 2006, my client, Dolores J. Roach was 85 years of age when she was persuaded by an employee of the assisted living facility, in which she and her recently deceased husband resided, to lend $200,000.00 to the employee for the purchase of a bar and grill.

According to a written agreement drafted after the transfer of funds, and soon after the police began to investigate, the "loan" was to become a gift to the employee upon Mrs. Roach's death. Although Mrs. Roach was diagnosed with dementia and was also suffering from chronic depression, exacerbated by the death of her husband just prior to the transfer of funds, a determination was made by law enforcement that Mrs. Roach was not a victim of exploitation of the elderly because medically she had the capacity to consent, and the transfer was not obtained through deception or intimidation.

This case was significant for me from two perspectives. First, while Mrs. Roach had the medical capacity to consent, I believe her decision to lend the $200,000.00 was clearly the product of undue influence. In consultation with, and at the request of Mrs. Roach, I pursued a course of action to attempt to get the Florida Legislature to amend Florida Statutes to include "undue influence" in the definition of exploitation of the elderly in limited circumstances.

Second, my involvement with Mrs. Roach served as a guide for me in my elder law practice. I took extra measures with my clients to make sure that the decisions they made regarding the disposition of their property or the appointment of individuals to make decisions on their behalf, was the independent decision of the client, and not being unduly influenced by someone that stood to benefit.

In furtherance of this, I endeavored to speak to seniors' groups on various topics with an emphasis on taking the necessary steps to limit the opportunity for people to take advantage of them.

ii. *State of Florida v. Gary M. Richardson*
Circuit Court in and for Volusia County Florida
Judge: Julianne Piggotte / Richard B. Orfinger
Volusia Clerk No.: 1999 030703 CFAES
Information filed: March 5, 1999
Opposing Counsel: Not Applicable based on my participation in case.

I was involved in the case as the intake attorney and was responsible for directing the initial State Attorney Investigation and the filing of formal charges for DUI Manslaughter against Gary M. Richardson. Richardson was ultimately convicted by a jury, and sentenced to the maximum, 15 years in state prison.

The decedent had recently turned 16 years of age and was killed instantly when the vehicle she was driving was struck by Richardson. I still vividly recall personally meeting with the decedent's parents. Although I knew there was little that the prosecution of Richardson could do to bring comfort to them, it left an indelible impression on me of the importance of making sure that they were fully informed about the process.

This case was significant in my formation as a young prosecutor because it became the foundation of the way I would deal with victims and next of kin who find themselves suddenly immersed in the criminal justice system. I continued this practice of personally meeting with victims of violent crimes and the next of kin in cases involving death throughout my career.

iii. *State of Florida v. Paul Adams*
County Court in and for Volusia County Florida
Judge: Peter F. Marshall (Retired)
Volusia Clerk No.: 1996-047783 MMAES
Information filed: September 30, 1996
Opposing Counsel: Roy Edward Leinster (Deceased)

In August 1996, Paul Adams was charged with possession of cannabis and possession of drug paraphernalia, both first degree misdemeanors. In November 1996, Mr. Adams' attorney filed a motion to declare section 893.13, Florida Statutes unconstitutional as applied to the terminally ill.

The basis for the Motion was that cannabis was medically necessary for therapeutic purposes for Mr. Adams who was diagnosed with a terminal illness, and therefore the law prohibiting its possession was unconstitutional as applied to him.

A hearing on the Motion would have required a significant amount of time and resources, including the testimony of medical professionals and otherwise. Once the State prevailed on the Motion, it was clear that Mr. Adams' intent was to appeal the ruling as far as he could take it,

again consuming a significant amount of the State's resources in an attempt to change the law utilizing the court system.

As a young prosecutor, in consultation with others, a decision was made to dismiss the charges against Mr. Adams. At this formative point in my career, I learned the importance of evaluating the intangible aspects of a case.

iv. ***State of Florida v. Willie Butler***
County Court in and for Volusia County Florida
Volusia Clerk No.: 1995 056519 MMAES
Judge: Thomas E. Bevis (Deceased)
Opposing Counsel: **Kevin Bledsoe**
County of Volusia, Legal Department
kbledsoe@volusia.org
386-785-5610

In 1996 I was assigned to the State Attorney's Office Domestic Violence Unit. During this time there was a county court division assigned exclusively to handle all misdemeanor domestic violence cases in Volusia County. When I was assigned to the Domestic Violence Unit, as often happened, I was handed a couple of boxes of cases that were in various stages of prosecution.

One of the boxes I was handed included a case that was set ready for trial, and this was to be my first jury trial. I had little time to familiarize myself with the case. I did all the things you were trained to do, verified the availability of witnesses, met with the victim and with the arresting officer in preparation for trial.

My preparation was unexpectedly interrupted the night before trial. As I was finalizing my outlines for my opening, questioning, and closing argument, there was suddenly a significant amount of police activity in my neighborhood. I soon found out that less than a mile down the street, a prominent local businessman had been murdered in his driveway during a robbery gone bad. After the neighborhood eventually quieted down to some extent, still distracted, I returned to my trial preparation and was able to show up for trial knowing I was fully prepared for anything.

During trial, the defense attorney began to elicit testimony from the victim concerning an incident in which she was alleged to have threatened another man with a machete. I objected to the introduction of this testimony concerning the prior incident. The court admitted the testimony over my objection on the basis that this Defendant was claiming self-defense, alleging the victim threatened him with a meat cleaver and his knowledge of the prior incident was therefore relevant to his claim of self-defense. There were also several other things the victim testified to that were inconsistent with her prior statements and the discussions we had during trial preparation. The jury came back not guilty.

I learned many valuable lessons from this, my first jury trial, and from the time I spent in the domestic violence unit. The first lesson was that you can never be too prepared and just when you think you are fully prepared, prepare for the unexpected.

The nature of trial work and dealing with victims and witnesses always adds an element of unpredictability. The best way to prepare for unpredictability is to be fundamentally sound in the nuts and bolts of the law, statutes, rules of procedure, evidence code and current case law. If you are fundamentally sound, you can handle pretty much anything that is thrown your way.

The time spent in the domestic violence unit also gave me a first-hand education on the dynamics involved in the cycle of violence and an understanding that a victim's tendency to recant or otherwise minimize was not a reason to be frustrated, but a challenge to become a better prosecutor and more effective interviewer by doing more listening than questioning.

v. ***Case Style – Unable to recall***
Circuit Court in and for Volusia County Florida
Judge: John W. Watson (Retired / Senior Judge)
Time frame: 1995-1996
Opposing Counsel: Unable to recall

Although, I don't recall the case style specifically, I still have a very vivid recollection of the words Judge Watson spoke and recently had the opportunity to tell him about the impact of those words. The words were significant to me in guiding my practice from there forward and I recently had the opportunity to share the lesson I learned with the attorneys appearing before me, hopefully in the constructive way I received them.

As a very new prosecutor, I was assigned to the juvenile division and at status conference announced one of my cases ready for trial. The trial was set for a time certain. The juvenile was charged with criminal mischief as a first-degree misdemeanor. In making final preparation for trial, talking to witnesses, and preparing the evidence for submission; it became clear to me that I would only be able to prove criminal mischief as a second-degree misdemeanor.

On the morning of the trial, I was able to work out a negotiated plea with defense counsel. Judge Watson had some questions for me that he wanted answers to before he would accept the negotiated plea, particularly a plea to an amended charge on the morning of trial.

The inquiry revolved around why I was just finding out I could not prove the first-degree misdemeanor. At the time, I wasn't fully grasping the importance of the question, because to me the difference between a first-degree misdemeanor and a second-degree misdemeanor in juvenile court didn't seem significant. I explained that with all the cases I had, I only recently had the opportunity to speak with the victim (cases were often filed by other prosecutors) and it was the first time I became aware of the proof issue.

Although I may not have the exact words, the principle of the words that he spoke left an indelible impression on the way I practiced law going forward. Those words were that when you announce ready for trial, those words have meaning, it means you've fully investigated your case, talked to witnesses, and reviewed the evidence. You are making a representation to the court that you are prepared to proceed, and that representation impacts other people and the availability of court time.

I continue to abide by those words to this very day.

22. Attach at least two, but no more than three, examples of legal writing which you personally wrote. If you have not personally written any legal documents recently, you may attach a writing sample for which you had substantial responsibility. Please describe your degree of involvement in preparing the writing you attached.

I was the drafter of both writing samples attached.

i. *DNA Center, LLC., a/a/o Jimmie Brazel v. State Farm Mutual Automobile Insurance Company*
"Order Granting Plaintiff's Motion for Final Summary Disposition and Denying Defendant's Motion for Summary Judgment"
Volusia Clerk No.: 2016 10572 CODL
Attached as **EXHIBIT 1**

ii. *The Kidwell Group LLC., d/b/a/ Air Quality Assessors of Florida, as assignee of benefits from Kent Lang v. State Farm Florida Insurance Company*
"Final Judgment for Attorney Fees and Costs"
Volusia Clerk No.: 2015 12056 CODL
Attached as **EXHIBIT 2**

PRIOR JUDICIAL EXPERIENCE OR PUBLIC OFFICE

23. Have you ever held judicial office or been a candidate for judicial office? If so, state the court(s) involved, the dates of service or dates of candidacy, and any election results.

Current position:	**Volusia County Court Judge**
Elected:	**November 6, 2012**
Reelected (without opposition)	**August 17, 2018**
Dates of Service:	**January 8, 2013 - present**

24. If you have previously submitted a questionnaire or application to this or any other judicial nominating commission, please give the name(s) of the commission, the approximate date(s) of each submission, and indicate if your name was certified to the Governor's Office for consideration.

In 2011, I submitted an application to this judicial nominating commission (Seventh Judicial Circuit) for a vacancy on the Volusia County Court. My name was not certified to the Governor's Office for consideration.

25. List any prior quasi-judicial service, including the agency or entity, dates of service, position(s) held, and a brief description of the issues you heard.

None.

26. If you have prior judicial or quasi-judicial experience, please list the following information:

(i) the names, phone numbers and addresses of six attorneys who appeared before you on matters of substance;

a. Michael Ciocchetti
386-334-0709
125 North Ridgewood Avenue
Daytona Beach, FL 32114

b. David Gagnon
904-356-0700
Taylor Day, P.A.
50 North Laura Street
Suite 3500
Jacksonville, FL 32202

c. Elba Roman-Pacheco
386-822-6400
Assistant State Attorney
Seventh Judicial Circuit
101 North Alabama Avenue
DeLand, FL 32724

d. Louis Rossi
386-822-5770
Assistant Public Defender
Seventh Judicial Circuit
101 North Alabama Avenue
DeLand, FL 32724

e. Kimberly Simoes
386-956-8532
Simoes Davila
910 Southwest First Avenue
Suite 201
Ocala, FL 34471

f. Matthew Shapiro
386-299-5725
Rice Law Firm
222 Seabreeze Boulevard
Daytona Beach, FL 32118

(ii) the approximate number* and nature of the cases you handled during your tenure;

a. County Civil
   i. Evictions – more than 5,000
   ii. Insurance/Assignment of Benefits/PIP – more than 10,000
   iii. Small Claims – more than 5,000
   iv. Traffic – more than 2,000
   v. Other County Civil – more than 3,000

b. Injunctions
   i. Dating Violence- more than 75
   ii. Repeat Violence – more than 300
   iii. Sexual Violence – more than 20
   iv. Stalking Violence – more than 300

c. County Criminal
   i. Criminal Traffic – more than 1000
   ii. Domestic Violence – more than 300
   iii. Other Misdemeanor – more than 600

d. First Appearance
   i. Probable Cause / Bond Determinations – over 8,000
   ii. Extradition Hearings/Waiver Hearings – over 100

**The numbers set forth above reflect a minimum approximation of cases filed in divisions to which I have been assigned during my tenure as a County Court Judge. The fact that they were assigned to my division does not mean that I personally closed or otherwise disposed of the case.*

(iii) the citations of any published opinions; and

a. *Midland Funding LLC, v. James Seguin,* 27 Fla. L. Weekly Supp. 889 (Fla. Volusia Cty. Ct. 2019)

b. *Omnicare Medical Center, Inc., a/a/o Allen Mckee v. Windhaven Insurance Company,* 26 Fla. L. Weekly Supp. 604a (Fla. Volusia Cty. Ct. 2018)

c. *Mauricio Chiropractic Clinic, P.A., Etc., v. Windhaven Insurance Company,* 26 Fla. L. Weekly Supp. 118b (Fla. Volusia Cty. Ct. 2017)

d. *Robert P. Robinson v. United Services Automobile Association,* 24 Fla. L. Weekly Supp. 828b (Fla. Volusia Cty. Ct. 2016)

e. *New Smyrna Imaging, LLC., as assignee of Jeff Olkowski v. State Farm Mutual Automobile Insurance Company,* 23 Fla. L. Weekly Supp. 585a (Fla. Volusia Cty. Ct. 2015)

f. *Emergency Medical Associates of Tampa Bay, L.L.C., as assignee of Shawn McNally-Plast v. Progressive Select Insurance Company,* 23 Fla. L. Weekly Supp. 58b (Fla. Volusia Cty. Ct. 2014)

g. *Graham's Carpet Cleaning and Restoration, Inc. a/a/o Ignacio Masci v. Tower Hill Prime Insurance Company* 22 Fla. L. Weekly Supp. 829a (Fla. Volusia Cty. Ct. 2014)

h. *Michael Harner v. Rhonda Carter* 22 Fla. L. Weekly Supp. 462a (Fla. Volusia Cty. Ct. 2014)

i. *Emergency Medicine Professionals, P.A. as assignee of Jessica Rettinger v. Acceptance Insurance Company* 22 Fla. L. Weekly Supp. 369a (Fla. Volusia Cty. Ct. 2014)

j. *Emergency Medicine Professionals, P.A. as assignee of Londarel Harris v. Acceptance Insurance Company, Inc.* 22 Fla. L. Weekly Supp. 112a (Fla. Volusia Cty. Ct. 2014)

k. *The Housing Authority of the City of Daytona Beach, Florida v. Michael A. Brown* 21 Fla. L. Weekly Supp. 1050a (Fla. Volusia Cty. Ct. 2014)

l. *State of Florida v. Karen Yvonne Bridges-Case* 21 Fla. L. Weekly Supp. 679a (Fla. Volusia Cty. Ct. 2013)

m. *Emergency Medicine Professionals, P.A. a/a/o of Jessica Rettinger v. Acceptance Insurance Company* 21 Fla. L. Weekly Supp. 569b (Fla. Volusia Cty. Ct. 2013)

(iv) descriptions of the five most significant cases you have tried or heard, identifying the citation or style, attorneys involved, dates of the case, and the reason you believe these cases to be significant.

a. ***Central Florida Medical & Chiropractic Center a/a/o Ronald Sealey v. Progressive American Insurance Company***
(Part I – Competing Motions for Summary Disposition – entry of Final Judgment)
Volusia Clerk No.: 2014 20479 CONS
Plaintiff's Attorney: Kimberly P. Simoes
Defendant's Attorney: Eric Biernacki, Whitney Dort, and Robert Adams
Complaint Filed: February 18, 2014
Final Judgment Entered: May 11, 2015

This case involved a constitutional challenge to the PIP statute and specifically recent legislative changes to the statute. Plaintiff alleged that the amendment to section 627.736(1)(a), Florida Statutes rendered the statute unconstitutional on its face and as applied in this case. The pivotal language added to the statute set forth a requirement that for the insured under a policy of PIP coverage to be eligible to receive medical benefits, the insured must receive initial services and care for a covered incident within 14 days of the motor vehicle accident.

The Plaintiff alleged that the requirement to seek treatment within 14 days constituted a denial of due process and equal protection, and unreasonably denied the Plaintiff access to courts. The constitutional challenge was rejected, and final judgment entered on behalf of Progressive. The final judgment was affirmed on appeal by the Seventh Judicial Circuit in its appellate capacity as referenced by Volusia Appellate Clerk No.: 2015 10016 APCC.

This case was significant to me because it was the first time I presided over a constitutional challenge to a statute. Additionally, it was significant in that it was at the time a case of first impression.

b. ***Central Florida Medical & Chiropractic Center a/a/o Ronald Sealey v. Progressive American Insurance Company*** (Part II – Order Granting Attorney Fees)
Volusia Clerk No.: 2014 20479 CONS
Plaintiff's Attorney: Kimberly P. Simoes
Defendant's Attorney: Eric Biernacki, Whitney Dort, and Neil Andrews
Order Entered: September 7, 2018

This was the continuation of the case as set forth in "a." above. The court having ruled in favor of the Defendant and the Final Judgment having been affirmed on appeal, the matter was now before the court on the issue of attorney fees.

The Defendant had extended an Offer of Judgment to the Plaintiff in accordance with section 768.79, Florida Statutes and the Defendant asserted it was now entitled to recover reasonable attorney fees in accordance with the statute. The Plaintiff countered that even though an offer was made pursuant to section 768.79, this was a small claims case and the rules governing smalls claims court did not provide a procedural rule permitting proposals for settlement. Additionally, Plaintiff asserted that Fla. R. Civ. P. 1.442 which does govern proposals for settlement had not been invoked and section 768.79 could not operate independently of 1.442 and therefore Defendant was not entitled to recover attorney fees.

In awarding attorney fees in favor of Defendant, I found that section 768.79 applied to PIP cases and conferred a substantive right to recover attorney fees and that an absurd result would follow if the court were to determine that the failure to adopt a rule of procedure was a valid basis to deny a party a substantive right conferred by the legislature.

This matter was significant because of the issues involved. The PIP statute generally provides a one-way street for Plaintiff as prevailing party to recover attorney fees. A determination that Rule 1.442 applies to small claims cases or that section 768.79 operates independently of a procedural rule potentially changes the playing field in PIP cases because of the availability of attorney fees to both parties.

This matter is presently on appeal before the Fifth District Court of Appeal: *Central Florida Medical & Chiropractic Center a/a/o Ronald Sealey v. Progressive American Insurance Company.* Case Number 5D21-29

c. ***Theodore Doran v. State Farm Mutual Automobile Insurance***
Volusia Clerk No.: 2016 34709 COCI
Plaintiff's Attorney: Michael Ciocchetti
Defendant's Attorney: Troy J. McRitchie and Brendan J. McKay
Complaint Filed: December 12, 2016
Trial Dates: February 12-13, 2017

This case was significant in that it was the first jury trial I presided over as a sitting judge. Although I had presided over many non-jury trials, things change significantly when you add the component of the jury.

In this case, a dispute arose between the Plaintiff and Defendant over damage to the Plaintiff's motor vehicle. In the scheme of things, the amount in controversy became insignificant and the case became more about the legal issues that were contested along the way

and the resulting claims for attorney fees. The attorney fees issue took such prominence that counsel for State Farm requested the court to allow for the admission of evidence and testimony before the jury as to the amount of attorney fees being sought by Plaintiff. The request was denied, and the jury returned a verdict for Plaintiff.

d. ***State of Florida v. Cameron Joseph***
Volusia Clerk No.: 2018 109674
Defendant's Attorney: Martin G. White

The Defendant was issued a civil traffic infraction for Failure to Use Due Care toward a Pedestrian resulting in a fatality. At the time of the incident, the Defendant was an on-duty Florida Highway Patrol Trooper who, while responding as back-up, struck the "pedestrian" as she fled on foot from her father's motor vehicle. The father's motor vehicle had just been stopped by another Trooper.

At hearing, Defense Counsel argued that at the time of impact, the Defendant's vehicle had traveled off of the "street or highway" and was not in an area where vehicles normally traveled, therefore Chapter 316 and specifically the charged offense were facially not applicable to the alleged conduct. After reviewing the statutes and case law provided, I agreed and dismissed the citation.

The significance of this case was not so much about the dismissal as it was the nature of the difficulty for county court judges handling traffic infractions involving death or serious bodily injury.

The rules of procedure and case law lead to a conclusion that the judge must not only be the judge, but also the "prosecutor" while remaining neutral. A task often easier said than done.

I am aware that many of my colleagues in certain areas of the state have Assistant State Attorneys appear in traffic infraction cases where there is an allegation of a resulting death. While I've often thought that would be beneficial to all parties to have a prosecutor appear, I was skeptical that the procedure was authorized by law.

In this case, I had to make that decision. I had an attorney attempt to make an appearance on behalf of FHP in prosecution of the citation. After researching the issue, I denied the request as not being authorized by rule or statute. The attorney was then sworn as an Assistant State Attorney and again sought to appear under the authority of the State Attorney to appear in all actions in this State civil or criminal. Although it would have made my job much easier, relying largely on the Florida Rules of Traffic Court and Florida Rules of Criminal Procedure, I found that the traffic court rules did not permit a prosecutor to appear.

This case was significant for me because there are procedures that are employed in other courts, counties and circuits that often would make the job easier, but not necessarily supported

by rule or law. I've always tried to ask the question, what is my authority for doing what I'm doing or for what I am being asked to do. This simple inquiry has served me well.

e. ***The Kidwell Group, LLC., et al, v. State Farm Florida Insurance Company***
Volusia Clerk No.: 2015 12056 CODL
Plaintiff's Attorney: Thomas J. Morgan, Sr., Thomas J. Morgan, Jr., Chad Barr, and Kimberly Simoes
Defendant's Attorney: Curt Allen & Brian Hohman
Plaintiff's Fee Expert: Darren Elkind
Defendant's Fee Expert: Janet Brown
Complaint Filed: November 15, 2015
Final Judgment for Attorney Fees Entered: July 28, 2020
The Kidwell Group, LLC., et al, v. State Farm Florida Insurance Company
Volusia Clerk No.: 2015 12032
Plaintiff's Attorney: Jeremy Hogan
Defendant's Attorney: Curt Allen & Brian Hohman
Complaint Filed: November 23, 2015
Final Judgment Awarding Attorney Fees Entered: September 15, 2016

The two cases above were handled separately but involved the same underlying issue. Each case involved the same Plaintiff, but in each case the Plaintiff employed different counsel who independently filed a voluntarily dismissal of the respective action.

However, in each of the cases, State Farm had given notice to the Plaintiff that pursuant to section 57.105, Florida Statutes the action was not supported by the material facts necessary to support the claim and the failure of the Plaintiff to dismiss the action within 21 days would result in State Farm seeking attorney fees. The voluntary dismissals filed both fell outside of the 21-day safe harbor period.

In each of the cases, I reached the conclusion that the claims filed by the Plaintiff were not supported by fact or law and that State Farm was entitled to recover reasonable attorney fees. The decision further went on to find that the fees would be apportioned equally between the Plaintiff and its attorney in each case.

These cases were significant for several reasons, including the way the cases were litigated. I was required to do a lot more refereeing than normal to maintain decorum. The cases also consumed a significant amount of time and involved challenging issues requiring significant research and analysis.

27. Provide citations and a brief summary of all of your orders or opinions where your decision was reversed by a reviewing court or where your judgment was affirmed with significant criticism of

your substantive or procedural rulings. If any of the opinions listed were not officially reported, attach copies of the opinions.

I am not aware of any direct reversals of any of my orders or opinions.

However, I am aware of a group of cases that were reversed by the Fifth District Court of Appeal. The cases addressed an issue commonly referred to as the as the "Billed Amount" or "BA" issue and I had ruled similarly to those cases which were reversed. Two of the cases I am aware of that I ruled on are as follows:

Accident & Injury Clinic, Inc., a/a/o Ashley Harris v. Geico Indemnity Company
Volusia Clerk No.: 2017 10858 CODL
CELPA Clinic, Inc., a/a/o Adriana Agosto v. GEICO Indemnity Company
Volusia Clerk No.: 2018 10436 CODL

As the trial judge, I ruled that the contract (insurance policy) entered into between the parties, under the factual circumstances stipulated to by the parties, required the insurer to pay the full amount billed by the medical provider.

The oversimplified version of the language in the policy provided that "[a] charge submitted by a provider, for an amount less than the amount allowed above, shall be paid in the amount of the charge submitted." The parties agreed that the amount billed in each of the cases was "less than the amount allowed above." The insurer argued that the policy read as a whole and the PIP statutory scheme, authorized the insurer to reduce the billed amount by 80%. The court rejected that argument finding that policy language could bind the insurer beyond what the statutes require and if not clear on its face, the policy at best was ambiguous and had to be construed against the insurer to provide additional coverage to the insured.

The opinions were upheld on appeal by the Seventh Judicial Circuit sitting in its appellate capacity. See Volusia Clerk Appellate Case No.: *2018 10031 APCC GEICO Indemnity Company, v. Accident & Injury Clinic, Inc., a/a/o Frank Irizzary.* However, the Circuit Appellate Court rejected the lower court's interpretation of the policy and instead upheld the lower court decisions based on an interpretation of the relevant statutory provisions.

In *GEICO General Insurance Company v. Accident & Injury Clinic, Inc., a/a/o Frank Irizarry,* 290 So.3d 980 (Fla. 5th DCA 2019), the Court disagreed with the circuit appellate opinion interpreting the statute and reversed the circuit appellate court.

Copies of all opinions referenced under this question are attached as **EXHIBIT 3.**

28. Provide citations for significant opinions on federal or state constitutional issues, together with the citation to appellate court rulings on such opinions. If any of the opinions listed were not officially reported, attach copies of the opinions.

Central Florida Medical & Chiropractic Center a/a/o Ronald Sealey v. Progressive American Insurance Company

Volusia Clerk No.: 2014 20479 CONS
(This case was previously reference in my answer to 26(iv) above)

Per Curiam Affirmed on Appeal by the Seventh Judicial Circuit Court of Florida sitting in its appellate capacity
Volusia Clerk Appellate Case No.: ***2015 10016 APCC per curiam affirmed***

Copies of the Final Judgment and Affirmance are attached hereto as **EXHIBIT 4.**

29. Has a complaint about you ever been made to the Judicial Qualifications Commission? If so, give the date, describe the complaint, whether or not there was a finding of probable cause, whether or not you have appeared before the Commission, and its resolution.

No, not to my knowledge. Pursuant to Article, Section 12(4) of the Florida Constitution, a complaint to the Judicial Qualifications Commission is confidential until there is a finding of probable cause and a filing of formal charges.

30. Have you ever held an attorney in contempt? If so, for each instance state the name of the attorney, case style for the matter in question, approximate date and describe the circumstances.

No.

31. Have you ever held or been a candidate for any other public office? If so, state the office, location, dates of service or candidacy, and any election results.

Housing Authority of the City of Daytona Beach
Commissioner 1997-1999 & 2002-2008
Vice Chair 2004-2008

City of Daytona Beach Planning Board
Member 2000

NON-LEGAL BUSINESS INVOLVEMENT

32. If you are now an officer, director, or otherwise engaged in the management of any business enterprise, state the name of such enterprise, the nature of the business, the nature of your duties, and whether you intend to resign such position immediately upon your appointment or election to judicial office.

Name of Enterprise:	**Conference of County of County Court Judges of Florida, Inc.**
Nature of the Business:	**(A) the betterment of the judicial system of the state** **(B) the improvement of procedure and practice in the several courts**

(C) to conduct conferences and institutes for continuing judicial education and to provide forums in which the county court judges of Florida may meet and discuss mutual problems and solutions

As membership is open only to County Court Judges, I would resign upon appointment to the circuit bench.

33. Since being admitted to the Bar, have you ever engaged in any occupation, business, or profession other than the practice of law? If so, explain and provide dates. If you received any compensation of any kind outside the practice of law during this time, please list the amount of compensation received.

Jeff Galloway Marathon Training Program

Program Director, Daytona Beach

From 2002 – 2005, I served as the program director for the local branch of the Jeff Galloway Marathon Training Program. The program director was an independent contractor and compensation was based on the number of participants you signed up for your local program. I do not recall, nor have I been able to obtain documentation of the exact amount but can state that in no calendar year did the compensation exceed $1,500.00 and the expenses far exceeded the compensation.

Pampered Chef

Sales Consultant

In approximately 2000-2001, I served as an independent sales consultant for Pampered Chef. Compensation was based on sales and paid mostly in free or discounted Pampered Chef products. I do not recall, nor have I been able to obtain documentation of the exact amount of compensation but can state that overall compensation did not exceed $1,000.00.

POSSIBLE BIAS OR PREJUDICE

34. The Commission is interested in knowing if there are certain types of cases, groups of entities, or extended relationships or associations which would limit the cases for which you could sit as the presiding judge. Please list all types or classifications of cases or litigants for which you, as a general proposition, believe it would be difficult for you to sit as the presiding judge. Indicate the reason for each situation as to why you believe you might be in conflict. If you have prior judicial experience, describe the types of cases from which you have recused yourself.

There are no types of cases or classifications, which as a general proposition, I would find difficult to sit as a presiding judge.

As a judge, I have recused myself from cases in which one of my former law partners represented a party and I have also recused myself from cases where one of my close campaign advisers was an attorney representing a party in the case.

PROFESSIONAL ACCOMPLISHMENTS AND OTHER ACTIVITIES

35. List the titles, publishers, and dates of any books, articles, reports, letters to the editor, editorial pieces, or other published materials you have written or edited, including materials published only on the Internet. Attach a copy of each listed or provide a URL at which a copy can be accessed.

Kelly, Christopher (2000 May-June). Florida Building Code. Quality Cities Magazine.
Kelly, Christopher (2000 January-February). Solid Waste. Quality Cities Magazine.

36. List any reports, memoranda or policy statements you prepared or contributed to the preparation of on behalf of any bar association, committee, conference, or organization of which you were or are a member. Provide the name of the entity, the date published, and a summary of the document. To the extent you have the document, please attach a copy or provide a URL at which a copy can be accessed.

None, except as may be set forth in response to question 37 immediately below.

37. List any speeches or talks you have delivered, including commencement speeches, remarks, interviews, lectures, panel discussions, conferences, political speeches, and question-and-answer sessions. Include the date and place they were delivered, the sponsor of the presentation, and a summary of the presentation. If there are any readily available press reports, a transcript or recording, please attach a copy or provide a URL at which a copy can be accessed.

Let the Sunshine In - An Overview of Florida Law on Open Meetings, presented on April 20, 2011, to elected and appointed officials from the City of South Daytona and the City of Port Orange.

Issues of Jurisdiction, presented on April 8, 2011, at the Daytona Beach Police Department for Law Enforcement Officers from agencies in the Seventh Circuit.

Constitutional Law and Issues of Criminal Procedure, presented to Daytona Beach Police Citizen's Academy in 2010.

Protecting our Seniors - Residents' Rights and Health Care Advance Directives presented in 2005 to the Senior Network of Advocates and Providers

During my private practice, I also lectured a handful of times on issues related to elder law, for various senior groups in the community.

38. Have you ever taught a course at an institution of higher education or a bar association? If so, provide the course title, a description of the course subject matter, the institution at which you taught, and the dates of teaching. If you have a syllabus for each course, please provide.

Florida Judicial College:

Alternatives to Contempt, January 2020 & 2021
Instructor

Contempt, March 2020 & May 2021
Instructor

County Court Civil Track Faculty, March 2018, March 2020 & May 2021
Instructor
Small Claims
Landlord – Tenant
Case Management
Best Practices

Mock Trial Faculty, 2018 & 2020 - present

Conference of County Court Judges of Florida (CCCJF)/
Florida State Court System - Office of Court Education:

The JQC and JEAC: What Judges Should Know, Distance Learning, August 2021
Instructor

Civil Symposium, 2019 CCCJF Annual Education Conference
Steering Judge

Current Issues in Insurance Cases, 2018 CCCJF Annual Education Conference
Steering Judge

Insurance Case Law Update, 2017 CCCJF Annual Education Conference
Steering Judge

U.S. Supreme Court Cases (Applicable to DUI Cases), 2016 DUI Adjudication Lab
Instructor

Current Issues in Civil Traffic Infractions Involving Death & Serious Bodily Injury, 2016 CCCJF Annual Education Conference
Instructor

Veteran's & Mental Health, 2015 CCCJF Annual Education Conference
Steering Judge

Fairness & Diversity Training for Judges, Seventh Judicial Circuit, December 2015
Instructor

Florida Court Personnel Institute:

Contemplating Contempt, April 2021
Instructor

Volusia County Bar Association:

Tips & Techniques for Conducting an Effective Evidentiary Hearing, May & November 2019
Presenter

Professionalism: Rules and Canons that Guide Communications between Judges, Attorneys and Self Represented Litigants, January 2019
Presenter

Wills, Trusts and Estates Seminar, March 2008.
Coordinator and Moderator

National Business Institute:

Civil Court Judicial Forum, May 2016
Panelist

39. List any fellowships, honorary degrees, academic or professional honors, honorary society memberships, military awards, and any other special recognition for outstanding service or achievement. Include the date received and the presenting entity or organization.

University of Florida College of Law, Honors in Appellate Advocacy, Spring 1993

University of Florida College of Law, Dean's List: Spring 1995

University of Florida, President's Spring Recognition of Outstanding Students 1995

40. Do you have a Martindale-Hubbell rating? If so, what is it and when was it earned?

No.

41. List all bar associations, legal, and judicial-related committees of which you are or have been a member. For each, please provide dates of membership or participation. Also, for each indicate any office you have held and the dates of office.

Florida Court Education Council
Member, September 2021 – present

Judicial Management Council
Member, July 2020 – present

Workgroup on the Continuity of Court Operations and Proceedings During and After Covid-19
Member, April 2020 - present
Member Criminal Subgroup
Member Civil Subgroup

Florida Court Education Council, Dean Selection Committee
Member, 2020

Conference of County Court Judges of Florida
Board of Directors, 2013 – present
Executive Committee, 2017- present
Circuit Representative, 2013 – 2017
Web Administrator, 2017- present

Education Committee
Member, 2013 – present
Vice Chair Civil Track, 2017 – 2021
Chair, 2021 - present

Legislative Committee,
Member, 2013-2017 & 2019 – present
Legislative Steering Committee, 2016 - 2020

Administration & Management Committee
Member, 2019 – present.

Civil Rules Committee
Member, 2013 - 2015

Traffic Rules Committee
Member, 2013 – 2017 & 2019 C
Chair, 2015 - 2017

Florida Bar
Member, 1995- present
Traffic Rules Committee
Member, 2016 - present
Rules of General Practice and Judicial Administration Committee
Member (Traffic Rules Liaison), 2019 – 2021

National Association of Elder Law Attorneys, Inc.
Member, 2006-2009

Volusia County Bar Association
Member, 1997 – present
Director, 2005-2008 and 2012
Elder Law Section
Member, 2009

Volusia County Young Lawyer's Association
Member, 1995-1997

42. List all professional, business, fraternal, scholarly, civic, charitable, or other organizations, other than those listed in the previous question to which you belong, or to which you have belonged since graduating law school. For each, please provide dates of membership or participation and indicate any office you have held and the dates of office.

Florida Supreme Court Historical Society
Member, 2019 – present

Basilica of St. Paul
Finance Committee & Endowment Trustee, 2006–present
Pastoral Council, 2008–2012

Daytona Beach Quarterback Club
Member, 1997-present
Coach 2011, Captain 2010, Captain-Elect 2009, Secretary 2008, Assistant Secretary 2007, Treasurer 2006, Assistant Treasurer 2005, Membership Chair 2003-2004

Gator Club of Volusia County
Board of Directors 2004-2012
Chair, Florida Young & Involved 2004-2006
Producer, Pigskin Preview Show 2004-2006

Daytona Beach Leadership Council
Member 2005-present
Board of Directors, 2007-2008

Father Lopez Catholic High School
School Board 2006-2009

Daytona Beach Track Club
Member 2002-present
Board of Directors 2002-2007

Indigo Unit 2 Homeowner's Association
Board of Directors 2007

Susan G. Komen Race for the Cure
Volunteer Coordinator 2002-2003

43. Do you now or have you ever belonged to a club or organization that in practice or policy restricts (or restricted during the time of your membership) its membership on the basis of race, religion (other than a church, synagogue, mosque or other religious institution), national origin, or sex (other than an educational institution, fraternity or sorority)? If so, state the name and nature of the club(s) or organization(s), relevant policies and practices and whether you intend to continue as a member if you are selected to serve on the bench.

No.

44. Please describe any significant pro bono legal work you have done in the past 10 years, giving dates of service.

None. As I close in on my 9th year as a judge, I have been restricted in the ability to perform pro bono legal work.

45. Please describe any hobbies or other vocational interests.

Completing Marathons
Cooking
Barbequing

46. Please state whether you have served or currently serve in the military, including your dates of service, branch, highest rank, and type of discharge.

Dates of Service: **July 1, 1986 – August 8, 1986**
Branch: **United States Army**
Rank: **New Cadet, United States Military Academy**
Type of Discharge: **Honorable**

47. Please provide links to all social media and blog accounts you currently maintain, including, but not limited to, Facebook, Twitter, LinkedIn, and Instagram.

No current social media accounts. I previously maintained a personal Facebook account, but deactivated/deleted the account in the fall of 2020.

FAMILY BACKGROUND

48. Please state your current marital status. If you are currently married, please list your spouse's name, current occupation, including employer, and the date of the marriage. If you have ever been divorced, please state for each former spouse their name, current address, current telephone number, the date and place of the divorce and court and case number information.

Marital Status: Single, never been married.

49. If you have children, please list their names and ages. If your children are over 18 years of age, please list their current occupation, residential address, and a current telephone number.

No children

CRIMINAL AND MISCELLANEOUS ACTIONS

50. Have you ever been convicted of a felony or misdemeanor, including adjudications of guilt withheld? If so, please list and provide the charges, case style, date of conviction, and terms of any sentence imposed, including whether you have completed those terms.

No.

51. Have you ever pled nolo contendere or guilty to a crime which is a felony or misdemeanor, including adjudications of guilt withheld? If so, please list and provide the charges, case style, date of conviction, and terms of any sentence imposed, including whether you have completed those terms.

No.

52. Have you ever been arrested, regardless of whether charges were filed? If so, please list and provide sufficient details surrounding the arrest, the approximate date and jurisdiction.

No.

53. Have you ever been a party to a lawsuit, either as the plaintiff, defendant, petitioner, or respondent? If so, please supply the case style, jurisdiction/county in which the lawsuit was filed, case number, your status in the case, and describe the nature and disposition of the matter.

No.

54. To your knowledge, has there ever been a complaint made or filed alleging malpractice as a result of action or inaction on your part?

No.

55. To the extent you are aware, have you or your professional liability carrier ever settled a claim against you for professional malpractice? If so, give particulars, including the name of the client(s), approximate dates, nature of the claims, the disposition and any amounts involved.

No.

56. Has there ever been a finding of probable cause or other citation issued against you or are you presently under investigation for a breach of ethics or unprofessional conduct by any court, administrative agency, bar association, or other professional group. If so, provide the particulars of each finding or investigation.

No.

57. To your knowledge, within the last ten years, have any of your current or former co-workers, subordinates, supervisors, customers, clients, or the like, ever filed a formal complaint or accusation of misconduct including, but not limited to, any allegations involving sexual harassment, creating a hostile work environment or conditions, or discriminatory behavior against you with any regulatory or investigatory agency or with your employer? If so, please state the date of complaint or accusation, specifics surrounding the complaint or accusation, and the resolution or disposition.

No.

58. Are you currently the subject of an investigation which could result in civil, administrative, or criminal action against you? If yes, please state the nature of the investigation, the agency conducting the investigation, and the expected completion date of the investigation.

No.

59. Have you ever filed a personal petition in bankruptcy or has a petition in bankruptcy been filed against you, this includes any corporation or business entity that you were involved with? If so, please provide the case style, case number, approximate date of disposition, and any relevant details surrounding the bankruptcy.
No.

60. In the past ten years, have you been subject to or threatened with eviction proceedings? If yes, please explain.

No.

61. Please explain whether you have complied with all legally required tax return filings. To the extent you have ever had to pay a tax penalty or a tax lien was filed against you, please explain giving the date, the amounts, disposition, and current status.

I have complied with all legally required tax return filings.

HEALTH

62. Are you currently addicted to or dependent upon the use of narcotics, drugs, or alcohol?

No.

63. During the last ten years have you been hospitalized or have you consulted a professional or have you received treatment or a diagnosis from a professional for any of the following: Kleptomania, Pathological or Compulsive Gambling, Pedophilia, Exhibitionism or Voyeurism? If your answer is yes, please direct each such professional, hospital and other facility to furnish the Chairperson of the Commission any information the Commission may request with respect to any such hospitalization, consultation, treatment or diagnosis. ["Professional" includes a Physician, Psychiatrist, Psychologist, Psychotherapist or Mental Health Counselor.] Please describe such treatment or diagnosis.

No.

64. In the past ten years have any of the following occurred to you which would interfere with your ability to work in a competent and professional manner: experiencing periods of no sleep for two or three nights, experiencing periods of hyperactivity, spending money profusely with extremely poor judgment, suffering from extreme loss of appetite, issuing checks without sufficient funds, defaulting on a loan, experiencing frequent mood swings, uncontrollable tiredness, falling asleep without warning in the middle of an activity. If yes, please explain.

No.

65. Do you currently have a physical or mental impairment which in any way limits your ability or fitness to properly exercise your duties as a member of the Judiciary in a competent and professional manner? If yes please explain the limitation or impairment and any treatment, program or counseling sought or prescribed.

No.

66. During the last ten years, have you ever been declared legally incompetent or have you or your property been placed under any guardianship, conservatorship or committee? If yes, provide full details as to court, date, and circumstances.

No.

67. During the last ten years, have you unlawfully used controlled substances, narcotic drugs, or dangerous drugs as defined by Federal or State laws? If your answer is "Yes," explain in detail. (Unlawful use includes the use of one or more drugs and/or the unlawful possession or distribution of drugs. It does not include the use of drugs taken under supervision of a licensed health care professional or other uses authorized by Federal or State law provisions.)

No.

68. In the past ten years, have you ever been reprimanded, demoted, disciplined, placed on probation, suspended, cautioned, or terminated by an employer as result of your alleged consumption of alcohol, prescription drugs, or illegal drugs? If so, please state the circumstances under which such action was taken, the name(s) of any persons who took such action, and the background and resolution of such action.

No.

69. Have you ever refused to submit to a test to determine whether you had consumed and/or were under the influence of alcohol or drugs? If so, please state the date you were requested to submit to such a test, the type of test required, the name of the entity requesting that you submit to the test, the outcome of your refusal, and the reason why you refused to submit to such a test.

No.

70. In the past ten years, have you suffered memory loss or impaired judgment for any reason? If so, please explain in full.

No.

SUPPLEMENTAL INFORMATION

71. Describe any additional education or experiences you have which could assist you in holding judicial office.

Administrative Judge of Volusia County Court
Appointed by Chief Judge upon recommendation of County Court Judges
2017 – 2021

Mentor Judge
2018-present

Volusia County Elections Canvassing Board Chair
2016 - present

Completed Faculty Training Course
February 2014 (Required before we can teach other judges)

Leadership Daytona Program
2004

Volusia County Citizen's Academy
2004

2020 Florida Transportation Plan Committee
Member, 2000 – representing the Florida League of Cities, Inc.

Institute for Florida Elected Municipal Officials
Completed, 1999

72. Explain the particular contribution you believe your selection would bring to this position and provide any additional information you feel would be helpful to the Commission and Governor in evaluating your application.

I was blessed to grow up in a household with parents that demonstrated the value of hard work and a commitment to the community on a daily basis. And more recently, one of my co-instructors in a continuing judicial education session reminded the participants that a judge should be patient, dignified and courteous. Those three values have additional meaning to me because they mirror the way my parents raised me to treat others, as well as how my parents conducted themselves in their interactions with others. While it's certainly not as easy as the examples my parents set, my upbringing established a solid foundation that forms the guiding principles for how I strive to treat people every day, both inside and

outside a courtroom. I believe this is one of the most important attributes of a good judge; treating all people in a patient, dignified and courteous manner.

The examples my parents set for hard work and commitment to the community have also served me well. I started working on a paper route at age 10, and then moved on to washing dishes at a local steakhouse, and worked my way up eventually being promoted to cook, all while I participated in organized sports and other school clubs and organizations.

My parents also taught me to pursue a lifelong quest for knowledge and continuous self-improvement. These traits drove me seek out new opportunities in my legal practice and to develop my skills and abilities as a lawyer. And now as a judge, they continue to drive me to seek new opportunities to learn and grow in circuit court.

REFERENCES

73. List the names, addresses, e-mail addresses and telephone numbers of ten persons who are in a position to comment on your qualifications for a judicial position and of whom inquiry may be made by the Commission and the Governor.

James R. Clayton
Chief Judge, Seventh Judicial Circuit
101 North Alabama Avenue
DeLand, FL 32724
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CERTIFICATE

I have read the foregoing questions carefully and have answered them truthfully, fully and completely. I hereby waive notice by and authorize The Florida Bar or any of its committees, educational and other institutions, the Judicial Qualifications Commission, the Florida Board of Bar Examiners or any judicial or professional disciplinary or supervisory body or commission, any references furnished by me, employers, business and professional associates, all governmental agencies and instrumentalities and all consumer and credit reporting agencies to release to the respective Judicial Nominating Commission and Office of the Governor any information, files, records or credit reports requested by the commission in connection with any consideration of me as possible nominee for appointment to judicial office. Information relating to any Florida Bar disciplinary proceedings is to be made available in accordance with Rule 3-7.1(l), Rules Regulating The Florida Bar. I recognize and agree that, pursuant to the Florida Constitution and the Uniform Rules of this commission, the contents of this questionnaire and other information received from or concerning me, and all interviews and proceedings of the commission, except for deliberations by the commission, shall be open to the public.

Further, I stipulate I have read, and understand the requirements of the Florida Code of Judicial Conduct.

Dated this 14th day of October, 2021.

Christopher Kelly
Printed Name

Signature

(Pursuant to Section 119.071(4)(d)(1), F.S.), . . . *The home addresses and telephone numbers of justices of the Supreme Court, district court of appeal judges, circuit court judges, and county court judges; the home addresses, telephone numbers, and places of employment of the spouses and children of justices and judges; and the names and locations of schools and day care facilities attended by the children of justices and judges are exempt from the provisions of subsection (1), dealing with public records.*

EXHIBIT

1

IN THE COUNTY COURT, IN AND
FOR VOLUSIA COUNTY, FLORIDA

CASE NO.: 2016-10572-CODL
DIVISION: 71

DNA CENTER, LLC
a/a/o Jimmie Brazel,

Plaintiff,

vs.

STATE FARM MUTUAL AUTOMOBILE
INSURANCE COMPANY,

Defendant.
_____/

ORDER GRANTING PLAINTIFF'S MOTION FOR FINAL SUMMARY DISPOSITION AND DENYING DEFENDANT'S MOTION FOR SUMMARY JUDGMENT

THIS CAUSE came before the Court on July 19, 2016 for hearing on the Plaintiff, DNA Center LLC's ("Plaintiff" or "DNA Center"), Motion for Final Summary Disposition and the Defendant, State Farm Mutual Automobile Insurance Company's ("Defendant" or "State Farm"), Motion for Summary Judgment. The Court, having considered the motions, the record, the admissible evidence, and the arguments of counsel, and being otherwise advised in the premises, finds as follows:

Facts

1. On August 8, 2015, Jimmie Brazel ("Insured") was involved in an automobile accident and suffered resulting injuries. At that time, the Insured was

covered by a State Farm PIP insurance policy, known as "Policy Form 9810A." (also referred to herein as "Policy").

2. The Insured executed an assignment of benefits to DNA Center for all benefits due under the terms of the Policy for all charges made by DNA Center for treatment rendered to the Insured for injuries related to the automobile accident.

3. State Farm Policy Form 9810A includes the following applicable provisions concerning PIP coverage:

> ***We*** will pay in accordance with the ***No-Fault Act*** properly billed and documented ***reasonable charges*** for ***bodily injury*** to an ***insured*** caused by an accident resulting from the ownership, maintenance, or use of a ***motor vehicle*** as follows:
>
> 1. **Medical Expenses**
>
> ***We*** will pay 80% of properly billed and documented ***medical expenses*** ....[1] (emphasis in original).

4. The policy defines the term "medical expenses" as follows:

> ***Medical Expenses*** means ***reasonable charges*** incurred for ***medically necessary***, surgical, X-ray, dental, and rehabilitative services .....[2] (emphasis in original).

5. The policy defines the term "reasonable charge" as follows:

> ***Reasonable Charge***, which includes reasonable expense, means an amount determined by ***us*** to be reasonable in accordance with the ***No-Fault Act***, considering one or more of the following:

[1] Policy Form 9810A at p. 14.
[2] Policy Form 9810A at p. 4.

1. usual and customary charges;

2. payments accepted by the provider;

3. reimbursement levels in the community;

4. various federal and state medical fee schedules applicable to ***motor vehicle*** and other insurance coverages;

5. the schedule of maximum charges in the ***No-Fault Act***,

6. other information relevant to the reasonableness of the charge for the service, treatment, or supply; or

7. Medicare coding policies and payment methodologies of the federal Centers for Medicare and Medicaid Services, including applicable modifiers, if the coding policy or payment methodology does not constitute a utilization limit. [3] (emphasis in original).

6. The Policy also provides:

> ***We*** will limit payment of **Medical Expenses** described in the **Insuring Agreement** of this policy's No-Fault Coverage to 80% of a properly billed and documented ***reasonable charge***, but in no event will we pay more than 80% of the following ***No-Fault Act*** "schedule of maximum charges" including the use of Medicare coding policies and payment methodologies of the federal Centers for Medicare and Medicaid Services, including applicable modifiers:

[3] Policy Form 9810A at p. 5.

a. For emergency transport and treatment by providers licensed under chapter 401, Florida Statutes, 200 percent of Medicare.

b. For emergency services and care provided by a hospital licensed under chapter 395, Florida Statutes, 75 percent of the hospital's usual and customary charges.

c. For emergency services and care as defined by s. 395.002, Florida Statutes, provided in a facility licensed under chapter 395, Florida Statutes, rendered by a physician or dentist, and related hospital inpatient services rendered by a physician or dentist, the usual and customary charges in the community.

d. For hospital inpatient services, other than emergency services and care, 200 percent of the Medicare Part A prospective payment applicable to the specific hospital providing the inpatient services.

e. For hospital outpatient services, other than emergency services and care, 200 percent of the Medicare Part A Ambulatory Payment Classification for the specific hospital providing the outpatient services.

f. For all other medical services, supplies, and care, 200 percent of the allowable amount under:

(I) The participating physician fee schedule of Medicare Part B, except as provided in sub-sub-subparagraphs (II) and (III).

(II) Medicare Part B, in the case of services, supplies, and care provided by ambulatory surgical centers and clinical laboratories.

(III) The Durable Medical Equipment Prosthetics/Orthotics and Supplies Fee Schedule of Medicare Part B, in the case of durable medical equipment.

However, if such services, supplies, or care is not reimbursable under Medicare Part V, as provided in this sub-subparagraph, then we will limit reimbursement to 80 percent of the maximum reimbursable allowance under workers' compensation, as determined under s. 440.13, Florida Statutes, and rules adopted thereunder which are in effect at the time such services, supplies, or care is provided. Services, supplies, or care that is not reimbursable under Medicare or workers' compensation (Florida Rules of Procedure for Worker's Compensation Adjudication) will not be reimbursed by ***us.***

For purposes of the above, the applicable fee schedule or payment limitation under Medicare is the fee schedule or payment limitation in effect on March 1 of the year in which the services, supplies, or care is rendered and for the area in which such services, supplies, or care is rendered, and the applicable fee schedule or payment limitation applies throughout the remainder of that year, notwithstanding any subsequent change made to the fee schedule or payment limitation, except that it will not be less than the allowable amount under the applicable schedule of Medicare Part B for 2007 for medical services, supplies, and care subject to Medicare Part B.[4] (emphasis in original).

[4] Policy Form 9810A at p. 16.

7. On various dates ranging from 9/1/15 through 12/1/15, the Insured received medical services from the DNA Center, and all of the services provided by to the Insured were the type of non-hospital non-emergency services that would be payable pursuant to the Policy.

8. DNA Center billed State Farm seeking reimbursement for the service rendered to the Insured.

9. State Farm tendered payment at 200% of Medicare and in State Farm's "Explanation of Review"[5] the following explanation was set forth:

> Our payment for this service is based upon a ***reasonable amount*** pursuant to both the terms and conditions of the policy of insurance under which the subject claim is being made as well as the Florida No-Fault Statute, which permits, when determining a ***reasonable charge for a service,*** an insurer to consider usual and customary charges and payments accepted by the provider, reimbursement levels in the community and various federal and state fee schedules applicable to automobile and other insurance coverages, ***and other information relevant to the reasonableness*** of the reimbursement for the service. ***The payment for this service is based upon 200% of the Participating Level of Medicare Part B physician fee schedule for the locale in which the services were rendered.*** (emphasis added).

Issue

10. The issue before the Court is whether State Farm's Policy Form 9810A complies with the requirements of Florida law, such that State Farm is entitled to limit reimbursement of a properly submitted bill for medical services

[5] Court Docket No.: 22

pursuant to the schedule of maximum charges set forth in section 627.736(5)(a)1-5, Florida Statutes (2015).

Plaintiff's Argument

11. The Plaintiff argues that State Farm must select one of two separate and distinct methodologies for the reimbursement of medical services, either the fact-dependent reasonable amount method *("Reasonable Amount Method")* set forth in section 627.736(5)(a), Florida Statutes (2015) or the Medicare fee schedule method (*"Fee Schedule Method")* set forth in section 627.736(5)(a)1-5, Florida Statutes (2015).

12. The Plaintiff further argues that rather than select one method, State Farm has instead adopted an unauthorized hybrid method comprised of elements from both the *Reasonable Amount Method* and the *Fee Schedule Method.*

13. The Plaintiff contends that the failure of State Farms' Policy Form 9810A to clearly and unambiguously elect reimbursement in accordance with the *Fee Schedule Method* necessarily means that State Farm's obligation to reimburse for the medical services in this case defaults to the *Reasonable Amount Method.*

Defendant's Argument

14. State Farm contends that this court's analysis must start and end with the fact that the Policy was approved by the Office of Insurance Regulation ("OIR") in accordance with section 627.736(5)(a)500, Florida Statutes (2015) and

approval by the OIR means the court must find the Policy complies with the notice requirements to limit reimbursement pursuant to the Fee Schedule Method as a matter of law.

15, State Farm next contends that to the extent *Geico Gen. Ins. Co. v. Virtual Imaging Services, Inc. ("Virtual III"),* 141 So.3d 147, 157 (Fla. 2013) may be interpreted as requiring State Farm to select one of the two methods of reimbursement, the holding in *Virtual III* does not apply to policies after 2012.

16. Further to the extent the reasoning of *Virtual III* might otherwise apply, the 2012 legislative amendments to section 627.736(5) render *Virtual III* inapplicable to the current PIP Statute.

17. Finally, it is State Farm's position that the Policy clearly and unambiguously puts the insured on notice that in no event would it pay more than the amounts allowed in the Fee Schedule Method in compliance with the applicable version of the PIP Statute.

Analysis

The Florida PIP statute

18. This lawsuit involves State Farm's reimbursement of Medical Benefits as governed by the version of the "Florida Motor Vehicle No-Fault Law" ("PIP Statute" or "No-Fault Law") in place as of January 1, 2013.

19. The PIP statute has been amended numerous times, and a brief history of that law is necessary to understand the context of the controversy in this case.

20. In 1971, the Florida Legislature enacted the No-Fault Law and from its inception and until January 1, 2008, the PIP Statute provided for a general rule of "reasonableness" for paying charges by health care providers for services rendered to PIP insured based on a fact-dependent standard.[6]

21. In short, the pre-2008 versions of the PIP statute generally mandated PIP insurers to pay medical bills at 80% of the reasonable charge, absent a specific statutory exception to the contrary.

22. On October 1, 2007, the Florida Motor Vehicle No-Fault Law was automatically repealed by its "sunset" provision.

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[6] 627.736 Required personal injury protection benefits; exclusions; priority; claims.—

(1) REQUIRED BENEFITS.—Every insurance policy complying with the security requirements of s. 627.733 shall provide personal injury protection to the named insured . . . for loss sustained by any such person as a result of bodily injury, sickness, disease, or death arising out of the ownership, maintenance, or use of a motor vehicle as follows:

(a) Medical benefits.—Eighty percent of all ***reasonable expenses*** for medically necessary medical . . . services, ...

(5) CHARGES FOR TREATMENT OF INJURED PERSONS.—

(a) Any physician, hospital, clinic, or other person or institution lawfully rendering treatment to an injured person for a bodily injury covered by personal injury protection insurance may charge the insurer and injured party only a ***reasonable amount*** . . . . In no event, however, may such a charge be in excess of the amount the person or institution customarily charges for like services or supplies. With respect to a determination of whether a charge for a particular service, treatment, or otherwise is ***reasonable***, consideration may be given to evidence of usual and customary charges and payments accepted by the provider involved in the dispute, and reimbursement levels in the community and various federal and state medical fee schedules applicable to automobile and other insurance coverages, and other information relevant to the reasonableness of the reimbursement for the service, treatment, or supply. (emphasis added).

23. However, effective January 1, 2008, the Legislature re-enacted a revised version of the Florida Motor Vehicle No-Fault Law.[7]

24. The revised No-Fault Law in effect from January 1, 2008 through June 30, 2012 identified two separate, distinct, and alternative methods for calculating the amount payable to the Insured for claims made under the PIP medical benefits provision.

25. The first method under the revised PIP Statute was the longstanding fact-dependent Reasonable Amount Method.[8]

26. The second method was a new alternative method, the Fee Schedule Method.[9]

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[7] *See,* Ch. 2007-324, §8, Laws of Fla. (2007).

[8] 627.736 Required personal injury protection benefits; exclusions; priority; claims.—
(5)(a)1. Any physician, hospital, clinic, or other person or institution lawfully rendering treatment to an injured person for a bodily injury covered by personal injury protection insurance may charge the insurer and injured party only a ***reasonable amount*** pursuant to this section for the services and supplies rendered . . . .
In no event, however, may such a charge be in excess of the amount the person or institution customarily charges for like services or supplies. With respect to a determination of whether a charge for a particular service, treatment, or otherwise is ***reasonable***, consideration may be given to evidence of usual and customary charges and payments accepted by the provider involved in the dispute, and reimbursement levels in the community and various federal and state medical fee schedules applicable to automobile and other insurance coverages, and other information relevant to the reasonableness of the reimbursement for the service, treatment, or supply. (emphasis added).

[9] 627.736 Required personal injury protection benefits; exclusions; priority; claims.—
(5)(a)2. The insurer ***may limit*** reimbursement to 80 percent of the following schedule of maximum charges:
a. For emergency transport and treatment by providers licensed under chapter 401, 200 percent of Medicare.
b. For emergency services and care provided by a hospital licensed under chapter 395, 75 percent of the hospital's usual and customary charges.
c. For emergency services and care as defined by s. 395.002(9) provided in a facility

licensed under chapter 395 rendered by a physician or dentist, and related hospital inpatient services rendered by a physician or dentist, the usual and customary charges in the community.

d. For hospital inpatient services, other than emergency services and care, 200 percent of the Medicare Part A prospective payment applicable to the specific hospital providing the inpatient services.

e. For hospital outpatient services, other than emergency services and care, 200 percent of the Medicare Part A Ambulatory Payment Classification for the specific hospital providing the outpatient services.

f. For all other medical services, supplies, and care, 200 percent of the allowable amount under the participating physicians schedule of Medicare Part B. However, if such services, supplies, or care is not reimbursable under Medicare Part B, the insurer may limit reimbursement to 80 percent of the maximum reimbursable allowance under workers' compensation, as determined under s. 440.13 and rules adopted thereunder which are in effect at the time such services, supplies, or care is provided. Services, supplies, or care that is not reimbursable under Medicare or workers' compensation is not required to be reimbursed by the insurer.

3. For purposes of subparagraph 2., the applicable fee schedule or payment limitation under Medicare is the fee schedule or payment limitation in effect at the time the services, supplies, or care was rendered and for the area in which such services were rendered, except that it may not be less than the allowable amount under the participating physicians schedule of Medicare Part B for 2007 for medical services, supplies, and care subject to Medicare Part B.

4. Subparagraph 2. does not allow the insurer to apply any limitation on the number of treatments or other utilization limits that apply under Medicare or workers' compensation. An insurer that applies the allowable payment limitations of subparagraph 2. must reimburse a provider who lawfully provided care or treatment under the scope of his or her license, regardless of whether such provider would be entitled to reimbursement under Medicare due to restrictions or limitations on the types or discipline of health care providers who may be reimbursed for particular procedures or procedure codes.

5. If an insurer limits payment as authorized by subparagraph 2., the person providing such services, supplies, or care may not bill or attempt to collect from the insured any amount in excess of such limits, except for amounts that are not covered by the insured's personal injury protection coverage due to the coinsurance amount or maximum policy limits. (emphasis added).

27. In 2012, the Legislature amended section 627.736(5) such that the Reasonable Amount Method and the Fee Schedule Method were no longer separate subsections, but now were both contained within the same subsection of 627.736.[10]

28. The 2012 Legislative amendment also addressed the issue of notice of an insurer's intent to limit reimbursement pursuant to the Fee Schedule Method. The amendment provided in pertinent part that a policy approved by the OIR was sufficient notice of the insurer's intent to limit payment pursuant to the Fee Schedule Method.[11]

29. About one year after the 2012 amendments to the PIP Statute took effect, the Florida Supreme Court in *Geico Gen. Ins. Co. v. Virtual Imaging Services, Inc. ("Virtual III"),* held that in construing the 2008 version of the PIP statute, which did not include the notice requirements of subsection (5)(a)5 as

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[10] (5) CHARGES FOR TREATMENT OF INJURED PERSONS.—
(a) A physician, hospital, clinic, or other person or institution lawfully rendering treatment to an injured person for a bodily injury covered by personal injury protection insurance may charge the insurer and injured party only a reasonable amount pursuant to this section for the services and supplies rendered . . . . In determining whether a charge for a particular service, treatment, or otherwise is reasonable, consideration may be given to evidence of usual and customary charges and payments accepted by the provider involved in the dispute, reimbursement levels in the community and various federal and state medical fee schedules applicable to motor vehicle and other insurance coverages, and other information relevant to the reasonableness of the reimbursement for the service, treatment, or supply.
1. The insurer may limit reimbursement to 80 percent of the following schedule of maximum charges:
a. For emergency transport and treatment by providers licensed under chapter 401, 200 percent of Medicare. . . .

[11] 627.736(5)(a) 5. An insurer may limit payment as authorized by this paragraph only if the insurance policy includes a notice at the time of issuance or renewal that the insurer may limit payment pursuant to the schedule of charges specified in this paragraph. A policy form approved by the office satisfies this requirement. If a provider submits a charge for an amount less than the amount allowed under subparagraph 1., the insurer may pay the amount of the charge submitted.

amended in 2012, "notice" to the insured, of the insurer's intention to use the Fee Schedule Method was required.

30. More importantly, the Florida Supreme Court addressed the dichotomy between the Reasonable Amount Method and the Fee Schedule methods of reimbursement in stating:

> [W]e conclude that the 2008 amendments were clearly permissive and offered insurers a choice in dealing with their insureds as to whether to limit reimbursements based on the Medicare fee schedules or whether to continue to determine the reasonableness of provider charges for necessary medical services rendered to a PIP insured based on the factors enumerated in section 627.736(5)(a). . . . [12]

> We conclude that because the policy did not reference the permissive Medicare fee schedule method of calculating reasonable medical expenses, GEICO was not permitted to limit reimbursements in accordance with the Medicare fee schedules. As the Kingsway Court explained, when the plain language of the PIP statute affords insurers two different mechanisms for calculating reimbursements, the insurer must clearly and unambiguously elect the permissive payment methodology in order to rely on it. See Kingsway, 63 So.3d at 67–68. . . . [13]

31. In other words, the Florida Supreme Court held (under the 2008 version of the statute) that there are two separate and distinct payment methodologies under the PIP statute; and, that the PIP insurer must choose one or the other in its policy and give notice to the insured of the method of reimbursement chosen.

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[12] Virtual III at 157.
[13] Virtual III at 158.

Approval of Policy 9810 by the Office of Insurance Regulation

32. State Farm contends that the Policy complies with the OIR Informational Memorandum OIR-12-02M and was approved by the OIR pursuant to subsection (5)(a)5 of the PIP statute.[14]

33. State Farm further contends that based on the "explicit language of §627.736(5)(a)5., the use of this approved policy form "satisfies" the requirement of the statute and permits State Farm to limit reimbursement based on the schedule of maximum charges as a matter of law."

34. It is accepted that the courts of this State are required to give deference to a State agency's interpretation of a statute that the agency is charged with implementing.[15]

35. However, the administrative approval by OIR of "a notice" does not automatically validate the contents of the insurance policy itself.

36. In *Gonzalez v. Associates Life Ins. Co., 641 So.2d 895 at 897, FN 1 (Fla. 3d DCA 1994)*, [The insurance company] argued that because the Florida Department of Insurance (the predecessor to OIR) pre-approved the form of the policy issued, the court should affirm the lower court's judgment in favor of the insurer. The court indicated that regardless of what deference should be accorded to the Department's determination, as a matter of law, the Department's approval of the

[14] The fact of that the Policy was approved by OIR is not contested.
[15] *Florida Interchange Carrier's Ass'n v. Clark* 678 So.2d 1267 (Fla. 1962).

policy form was clearly erroneous, and that reversal was required.

37. In *Kaufman v. Mutual of Omaha Ins. Co., 681 So.2d 747 at 749, FN 4 (Fla. 3d DCA 1996),* the insurer also argued for the validity of its insurance policy form on the basis that its insurance policy form was approved by Florida Department of Insurance, but the appellate court held that the agency's approval could not override the explicit terms of a statutory requirement.

38. Similar to *Gonzalez & Kaufman,* it is not disputed that State Farm's Policy Form 9810A was approved by OIR, however, the question remains as to whether such approval comports with the explicit terms of the statute as construed by applicable case law.

39. It is well-settled that state agencies, such as the OIR, have no authority to interpret or enforce contracts, or adjudicate contract disputes, and that such authority and jurisdiction is vested exclusively in the judiciary.[16]

40. Thus, even if Section 627.736(5)(a)5 did purport to delegate any authority to OIR to determine the validity of insurance policies, such a determination by that agency would not be immune from judicial review. [17]

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[16] *See, e.g., Peck Plaza Condominium v. Div. of Florida Land Sales and Condominiums, Dept. of Business Reg.,* 371 So.2d 152, 153-54 (Fla. 1st DCA 1979) (state agency had no authority to interpret and then to enforce its interpretation of provisions of a contract because jurisdiction to interpret such contract was vested solely in the judiciary); *Biltmore Construction Co. v. State, Department of General Services,* 363 So.2d 851, 853-854 (Fla. 1st DCA 1978) (agencies have no power to order specific performance of a contract, which only a court in exercise of its equitable powers can decree); *Vincent J. Fasano, Inc. v. School Bd. of Palm Beach* , 436 So.2d 201, 202 (Fla. 4th DCA1983) (school board had no authority to administratively adjudicate contractor's breach of contract claim).

[17] *See also, State v. Bender,* 382 So.2d 697, 700 (Fla. 1980) ("any delegation of legislative authority is open to judicial review").

41. The courts still retain the full jurisdiction to determine whether an administrative agency has performed in accordance with the Legislature's mandate. [18]

The Supreme Court's holding in Virtual Imaging

42. State Farm contends that *Virtual III* does not apply to Policy Form 9810A because it construed the 2008 version of the PIP statute, before the legislature adopted the notice provision in subsection (5)(a)5 in the 2012 amendments.

43. State Farm also suggests that *Virtual III* does not apply because the opinion states that the Court's "holding applies only to policies that were in effect from the effective date of the 2008 amendments to the PIP statute that first provided for the Medicare fee schedule methodology, which was January 1, 2008, through the effective date of the 2012 amendment, which was July 1, 2012." [19]

44. State Farm's argument ignores the introductory language of that same sentence, in which the Florida Supreme Court explained that the insurance company in that case (Geico) had recently amended its policy "to include ***an election*** of the Medicare fee schedules ***as the method*** of calculating reimbursements." (emphasis added).

45. The Florida Supreme Court also acknowledged that the amendment of the PIP Statute now requires notice of the election of the Fee Schedule Method.

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[18] *Askew*, 372 So. 2d at 918-919.
[19] *Virtual III* at 150.

46. However, noticeably absent from the opinion is any acknowledgement that the 2012 amendments in any way relieved the insurer of the obligation to clearly and unambiguously put the insured on notice of the election to pay pursuant to the permissive Fee Schedule Method to the exclusion of the Reasonable Amount Method.

47. As noted previously, the Legislature amended the PIP statute again in mid-2012. Among other things, some of the subsections were renumbered and modified, effective as of July 1, 2012 and January 1, 2013. The substance of subsection (5) remained largely unchanged, except that the subsections were renumbered and a new subsection (5)(a)5 was added.

48. The 2012 amendments maintained the same two different alternative methods established by the 2008 amendments, and did nothing to abrogate the pre-existing case law such as *Kingsway*[20], which required PIP insurers "to choose between two different payment calculation methodology options."

49. Absent any indication of an intention to change the law as construed by the courts, "the legislature must be presumed to have adopted" the prior judicial construction.[21]

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[20] Kingsway Amigo Ins. Co. v. Ocean Health, Inc., 63 So.3d 63 (Fla. 4th DCA 2011).

[21] *Baillargeon v. Sewell*, 33 So.3d 130, 141-142 (Fla. 2d DCA 2010). *See also, Brannon v. Tampa Tribune*, 711 So.2d 97, 99 (Fla. 1st DCA 1998)

50. Nothing in the 2012 amendments authorized PIP insurers to combine the two methods, or to pick and choose among the terms and conditions to create an amalgamated or hybrid method.

51. The same clear and unambiguous notice of election is still required regardless of subsection (5)(a)5, because even after the 2012 amendments, the PIP statute still has the same two methodology system discussed in *Virtual III.*

State Farm Policy Form 9810A

52. Arguably, State Farm Policy Form 9810A reserved the right to pay no more than the limits set forth in the Medicare Fee Schedule should it chooses to do so on a claim by claim basis.

53. The issue though is whether pursuant to *Virtual III,* State Farm clearly and unambiguously put the Insured on notice of its intent to elect the permissive Fee Schedule Method as the exclusive method of payment and for the reasons set forth herein, this court's answer to that question is no.

54. State Farm relies upon *Stand-Up MRI* and *Allstate Indemnity Co. v. Markley Chiro. &Acupuncture, LLC*, -- So. 3d --, 2016 WL 1238533 (Fla. 2d DCA Mar. 30, 2016), and attempts to compare Policy Form 9810A to the Allstate policy language at issue in those cases. Most recently, in *Florida Wellness & Rehab. v. Allstate Fire & Cas. Ins. Co.*, -- So.3d --, 2016 WL 3745527 (Fla. 3d DCA July 13, 2016), the Third DCA issued a decision following *Stand-Up MRI* and *Markley*

Chiropractic, and certifying conflict with the Fourth DCA's decision in *Orthopedic Specialists v. Allstate Ins. Co.*, 117 So.3d 19 (Fla. 4th DCA 2015).

55. It is clear that the First DCA's decision in *Stand-Up MRI*, the Second DCA's decision in *Markley Chiropractic*, and the Third DCA's decision in *Florida Wellness*, as well as the Fourth DCA's decision in *Orthopedic Specialists* are all consistent in their agreement that *Virtual III* announces the controlling test and requires the PIP insurer to give notice of its election to use one method or the other.

56. Despite these courts' agreement on the controlling test, their decisions are in conflict only on the ultimate issue of whether Allstate's policy sufficiently referred to the Medicare fee schedules.

57. Most recently, in *Orthopedic Specialists v. Allstate Ins. Co.*, 177 So.3d 19 (Fla. 4th DCA 2015), the Florida Fourth District Court of Appeal held:

> To elect a payment limitation option, the PIP policy must do so "clearly and unambiguously." **A policy is <u>not</u> sufficient unless it plainly and obviously limits reimbursement to the Medicare fee schedules <u>exclusively</u>.** The policy cannot leave [the PIP insurer's] choice of reimbursement method in limbo . . . The policy must make it inescapably discernible that it will not pay the "basic" statutorily required coverage and will instead substitute the Medicare fee schedules [schedule of maximum charges] **<u>as the exclusive form of reimbursement</u>**. (Emph. added).
>
> Reference State Farm conflicting policy provision . . .

58. On page 16 of Policy Form 9810A State Farm states clearly and unequivocally, expressly states that "in no event will we pay more than 80% of the following No-Fault Act 'schedule of maximum charges' including the use of

Medicare coding policies and payment methodologies of the federal Centers for Medicare and Medicaid Services, including applicable modifiers . . . ." and continues to track the language outlining the Fee Schedule Method of payment.

59. However, "In construing an insurance policy, courts should read the policy as a whole, endeavoring to give every provision its full meaning and operative effect."[22]

60. In reading the policy as a whole, the introductory sentence found on page 16 of the Policy, just prior the "notice" of intent to limit payment the Policy provides: "We will limit payment of Medical Expenses described in the Insuring Agreement of this policy's No-Fault Coverage to 80% of a properly billed and documented reasonable charge, but . . . ."

61. As was more fully set out in the Policy provisions above, the reference to payment, pursuant to the fact dependent Reasonable Amount Method of payment is also addressed on pages 4 and 14 of the Policy in pertinent part they read as follows:

> ***We*** will pay in accordance with the ***No-Fault Act*** properly billed and documented ***reasonable charges*** . . . .
>
> ***We*** will pay 80% of properly billed and documented ***medical expenses*** ....
>
> ***Medical Expenses*** means ***reasonable charges*** incurred for ***medically necessary***, surgical, X-ray, dental, and rehabilitative services .....

[22] *Auto-OwnersIns.Co. v. Anderson* 756 So.2d 29, 34 (Fla. 2000).

> ***Reasonable Charge***, which includes reasonable expense, means an amount determined by ***us*** to be reasonable in accordance with the ***No-Fault Act***, considering one or more of the following:

62. Because State Farm's Policy Form 9810A defines "reasonable charge" in a manner which purports to give State Farm unbridled discretion to consider "one or more" of the various factors found in the Reasonable Amount Method of Section 627.736(5)(a) and the Medicare Fee Schedule Method of Section 627.736(5)(a)1-5, the policy establishes an unauthorized hybrid method in contradiction to the PIP Statute as construed by the applicable case law, such as *Virtual III* and *Kingsway.*

63. The fact that State Farm's Policy sets forth a hybrid method of payment from which to provide itself with unbridled discretion to pick and choose between various elements of the Reasonable Amount Method and the Medicare Fee Schedule Method is further confirmed by State Farm's "Explanation of Review."

64. The EOR states that State Farm can "consider usual and customary charges and payments accepted by the provider, reimbursement levels in the community and various federal and state fee schedules applicable to automobile and other insurance coverages, and other information relevant to the reasonableness of the reimbursement for the service."

65. The EOR then in the next sentence, contrary to a fact dependent analysis of the reasonableness of reimbursement states: "The payment for this service is based upon 200% of the Participating Level of Medicare Part B physician fee schedule for the locale in which the services were rendered."

66. Regardless of the ultimate holding in each of the cases, *Virtual III*, *Stand-Up MRI, Orthopedic Specialists*, *Markley Chiropractic*, and *Florida Wellness* all apply the same notice-of-election test under which State Farm's hybrid methodology fails.

67. If State Farm wants to avail itself of the Fee Schedule Method of reimbursement it must clearly and unambiguously make that election in the Policy and in this case, State Farm has failed to so.

68. Accordingly, the Reasonable Amount Method is the "***default*** methodology for calculating PIP benefits."[23]

CONCLUSION

This Court finds that State Farm has failed to clearly and unambiguously elect the Medicare Fee Schedule Method in Policy Form 9810A, and has instead adopted an unauthorized hybrid method comprised of elements from both the Medicare Fee Schedule Method and the Reasonable Amount Method. With respect

[23] *See, Allstate Fire & Cas. Ins. v. Stand-Up MRI of Tallahassee, P.A.*, -- So.3d --, 40 Fla. L. Weekly D693, 2015 WL 12223701, *1 (Fla. 1st DCA Aug. 19, 2015) (noting that the Reasonable Amount Method "is the ***default methodology*** for calculating PIP reimbursements, which also apparently ***results in higher reimbursements***" than the Medicare Fee Schedule Method) (emph. added).

to the PIP claim submitted under Policy Form 9810A for this insured, State Farm is required to pay such claims in accordance with the default Reasonable Amount Method.

It is therefore Ordered that:

A. The Plaintiff's Motion for Summary Disposition is GRANTED; and

B. The Defendant's Motion for Summary Judgment is DENIED.

DONE AND ORDERED in Chambers at Deland, Volusia County, Florida, this 23rd day of September, 2016.

CHRISTOPHER KELLEY
COUNTY COURT JUDGE

Copies to: **Kimberly Simoes, Esq.,**
David Gagnon, Esq.

EXHIBIT

2

IN THE COUNTY COURT OF THE
SEVENTH JUDICIAL CIRCUIT
IN AND FOR VOLUSIA COUNTY,
FLORIDA

THE KIDWELL GROUP LLC,
d/b/a AIR QUALITY ASSESSORS
OF FLORIDA, as assignee of benefits
from KENT LANG,

Plaintiff,

vs.

STATE FARM FLORIDA
INSURANCE COMPANY,

Defendant.
_____/

CASE NO: 2015 12056 CODL
DIVISION: 71

SMALL CLAIMS DIVISION

FINAL JUDGMENT FOR ATTORNEY FEES AND COSTS

THIS CAUSE came before the Court upon the Defendant, State Farm Florida Insurance Company's ("State Farm"), Motion for Attorney Fees and Costs ("Motion" or "Motion for Fees") [Docket No.111] and the Court having weighed the evidence presented, entertained the arguments of counsel and considered the applicable law, hereby finds as follows:

Procedural History

1. On November 25, 2015 the Plaintiff, the Kidwell Group LLC, d/b/a Air Quality Assessors of Florida as assignee of benefits from Kent Lang, ("Plaintiff" or "Kidwell") sued State Farm alleging that Kidwell was the assignee

of the right to benefits under a State Farm insurance policy, for services rendered as a result of an alleged covered loss.

2. On January 11, 2016, State Farm served upon the Plaintiff a "Motion for Sanctions" [Docket No.: 15] advising the Plaintiff and its counsel that if the Plaintiff failed to dismiss the pending action within 21 days of service of the Motion for Sanctions, State Farm would seek the imposition of sanctions against the Plaintiff and Plaintiff's counsel, the Morgan Law Group, P.A., ("the Morgan Group") to include an award of attorney's fees and costs, pursuant to section 57.105, Florida Statutes ("57.105").

3. On April 11, 2016, more than 21 days after service of the Motion for Sanctions, the Plaintiff filed a Notice of Voluntary Dismissal without Prejudice in this action.

4. On April 25, 2016, State Farm filed this Motion for Fees seeking the award of 57.105 attorney fees on the basis that Kidwell "knew, or had available to them, sufficient facts to determine that they could not establish a claim or that the claim could not be supported by the existing law."

5. The first hearing on State Farm's Motion for Fees took place on June 22, 2016. It was anticipated that the issues of both entitlement and the amount of fees to be awarded, if any, would both be fully addressed at that hearing on June 22, 2016. However, during that hearing, while Attorney Thomas Morgan, Jr. was

testifying, it was called to the Court's attention by State Farm's counsel that the interests of the Morgan Group and Kidwell had become adverse. Kidwell was given the option to seek independent counsel, and chose to do so, requiring a postponement of the hearing.

6. Prior to the continuation of the hearing on State Farm's Motion for Fees, Kidwell's newly retained counsel, Attorney Kimberly Simoes, and the Morgan Group filed Motions to bifurcate the determination of entitlement to fees from the determination of the amount of fees owed.

7. The Court granted the Motion to Bifurcate over State Farm's objection and two additional hearings were required, on November 2, 2016, and on March 14, 2017, solely on the issue of entitlement.

8. On December 21, 2017, this Court entered an Order ("Entitlement Order") [Docket No.: 157) finding that the lawsuit brought against State Farm by Kidwell was unsupported by law or fact and pursuant to section 57.105, State Farm was entitled to recover its reasonable attorney fees.

9. Additionally, in the Entitlement Order, in consideration and application of subsection 57.103(3), Florida Statutes, the Court found that Kidwell and its attorneys, the Morgan Group, would be responsible in equal amounts for any attorney fees the Court awarded to State Farm.

10. The Court also found that State Farm was the prevailing party in this

action and entitled to recover costs from Kidwell in accordance with section 57.041, Florida Statutes, and Fla. R. Civ. P. 1.420(c).

11. The hearing as to the amount of costs and fees took place over two separate days, August 15, 2018, and August 15, 2019.

Analysis as to Amount of Attorney Fees & Costs

Stipulations

12. It was stipulated by the Morgan Group that the hourly rates charged by State Farm's counsel were reasonable.[1] Accordingly, the Court finds the following rates to be reasonable:

- Attorney Curt Allen - $220 per hour;
- Attorney Alex Cayer - $195 per hour;
- Attorney Sean Hernandez - $195 per hour;
- Attorney Brian Hohman - $195 per hour;
- Attorney Mohammad Mubarak - $195 per hour; and
- Paralegal Melissa Lopretto - $95 per hour.

Witnesses & Evidence

13. In support of the amount of the fees and costs requested, State Farm called two witnesses: Attorney Brian Hohman as the custodian of records for Butler Weihmuller Katz Craig ("the Butler Firm"), and Attorney Janet Brown as an expert witness as to the reasonableness of the amount of fees claimed.

[1] The record does not reflect that Kidwell's attorney affirmatively joined in the stipulation as to the reasonableness of the hourly rates. However, Kidwell's co-counsel, Chad Barr, was present when the stipulation was announced, raised no objection, and presented nothing to contest the reasonableness of the hourly rates.

14. Through the testimony of Attorney Hohman, State Farm introduced into evidence the billing records supporting the fees and costs being sought in the cause.[2]

15. Mr. Hohman testified that the total amount of fees being sought was $83,849.00 and the total amount of costs was $18,734.18, inclusive of the expert fee.

16. Ms. Brown testified that she had reviewed the files and invoices of State Farm's counsel and she believed that all of the billing entries were reasonable and necessary in defense of State Farm against the action filed by the Plaintiff.

17. The Morgan Group called Attorney Darren Elkind as its expert witness, and also called Attorney Curtis Allen, one of State Farm's attorneys, and Attorney Thomas Morgan, Jr., from the Morgan Law Group.

18. Mr. Elkind testified that he believed a reasonable fee to be $21,015.00.

19. Mr. Elkind further testified that, in reviewing the time for work performed prior to the entry of the Entitlement Order, he disallowed time that he categorized as falling "into four buckets."

20. Mr. Elkind explained that the first "bucket" was time he disallowed for work performed after the date that State Farm filed its Motion for Sanctions,

[2] Defendant's 1 & 3.

February 3, 2016.[3]

21. The second "bucket" was time disallowed for an inordinate amount of correspondence, also referred to as unnecessary "back and forth" or "bicker[ing]."

22. The third "bucket" included time disallowed for two attorneys attending the same hearing.

23. The fourth "bucket" disallowed time spent travelling[4] by the attorneys.

24. In addition to the four buckets, Mr. Elkind also testified that with the exception of a very limited amount of time, he completely disallowed all time for work done post Entitlement Order because it was his "understanding that you don't get fees for fees even in the context of a sanction."

25. Mr. Elkind testified that he knew that the Butler Firm performed the work for which it billed, but his opinion was based on what he believed was reasonable and compensable under the guiding rules and case law.

26. Along those lines, Mr. Elkind testified that he adjusted some of the time entries as it related to what was billed versus what he believed was an

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[3] Although Mr. Elkind stated he disallowed for work performed after the filing of the Motion for Sanctions, in the context of the remainder of his testimony, the time disallowed was from the filing of the Motion for Sanctions until the filing of the Notice of Voluntary Dismissal. Mr. Elkind did allow for time after the filing of the Notice of Voluntary Dismissal as it related to the determination of entitlement on the Motion for Fees.

[4] The office of the Butler Firm is located in Tampa, Florida.

appropriate amount of time to bill for the task. He also disallowed a number of entries for "assessing case strategy."

27. Mr. Elkind broke down the allocation of the work he believed to be compensable as follows:

	Hours	Rate		
BAH	20.2	$195	=	$ 3,939.00
APC	11.5	195	=	2,242.50
CLA	57.7	220	=	12,694.00
SHE	9.3	195	=	1,813.50
MM4	0.6	195	=	117.00
MBL	2.2	95	=	209.00
				$21,015.00

28. While Mr. Elkind outlined the categories of billing entries he believed should not be allowed, with one very limited exception, he was not asked to identify any specific entries that he was disallowing or reducing as excessive as to the time spent or the specific reason why the particular work identified in a specific entry was not reasonable.[5]

29. Mr. Elkind was not asked to, and did not express an opinion as to the costs incurred in this action.

Time after the filing of the Motion for Sanctions

[5] On more than one occasion, the Morgan Group did attempt to enter into evidence the out-of-court handwritten notes of Mr. Elkind on State Farm's billing records. However, the Court sustained State Farm's objection. (See August 15, 2018, Transcript, pgs. 109-113 and 173. See also August 15, 2019, Transcript, pgs. 11-16.)

30. Mr. Elkind testified that it was his opinion that attorney fees should be disallowed for the time that State Farm continued to litigate the underlying case after the filing of the Motion for Sanctions. Mr. Elkind was candid that he was not aware of any rule that provided a bright line cut-off, but based his opinion on the belief that continued litigation was unnecessary if State Farm had in its possession information that proved the claim filed by the Plaintiff to be without merit.

31. The Fourth District Court of Appeal's decision in *Yakavonis v. Dolphin Petroleum,* 834 So. 2d 615 (Fla. 4th DCA 2006), is instructive. There, the appellate court addressed an argument that attorney's fees could only be imposed *after* the expiration of the 21-day safe harbor period. In rejecting such an argument, the *Yakavonis* court found that **there is nothing in the statute that requires the computation of time to begin only after the expiration of the safe harbor period**.

32. Applying *Yakavonis* to the instant facts, this Court declines to read into Section 57.105 a requirement that the computation of time ceases when a Motion for Sanctions is filed.

Inordinate amount of unnecessary correspondence

33. Mr. Elkind also disallowed time for an "inordinate amount of correspondence, also referred to as unnecessary "back and forth" or "bicker[ing]," but no specific entries were identified.

34. In *State Farm v. Palma,* 555 So. 2d 836 (Fla. 1990), the Supreme Court recognized that a party's choice to "go to the mat" in litigating a case may have potential consequences for the party should it not prevail. However, *Palma* also recognized that the choice of the parties to rigorously litigate is not a bar to a party recovering attorney's fees and costs for time spent sparring, notwithstanding the fact that another set of attorneys may have resolved the matter more amicably and timely.

35. Thus, as set forth in *Palma,* the question is not whether another set of attorneys may have resolved the matter more amicably resulting in less time, but instead, the question is the necessity of the work on the part of the Butler Firm in defense of State Farm.

Time for Two Attorneys

36. During his testimony, Mr. Elkind indicated that he disallowed time for two attorneys appearing at the same hearing on behalf of State Farm, but again no specific entries were identified, nor was testimony provided as Mr. Elkind's understanding of the services performed by each of the attorneys present. Therefore, in order to accept Plaintiff's argument, the Court would essentially be required to adopt a blanket rule that any hearing at which two attorneys appeared, the time of one those attorneys would *per se* not be compensable.

37. To adopt such a *per se* rule would require the Court to abandon its

obligation to make a determination by the court, "as to reasonable hours expended based on more than the court's own ideas of reasonableness . . . there must be a basis in the record to support the court's findings."[6]

38. Thus, the question is not about the number of attorneys present, instead the question is whether the actual services of each of those attorneys were required and did not constitute a duplication of services, which will necessarily be considered as a part of the Court's overall obligation to evaluate the necessity for the work in relation to the reasonableness of the fee.

Travel Time

39. The general rule is that attorney travel time is not compensable.

40. In this case, the Court considered two exceptions to that general rule under which attorney travel time would be compensable.

41. The first exception requires a showing by the party seeking fees that counsel could not be found in the relevant market area with competency in the subject matter of this case.

42. As to the first exception, Mr. Elkind stated that although he did not know whether there are any attorneys in this area that performed first party work for State Farm Florida, the Defendant in this case, he does know there are attorneys that do first party work for insurance companies.

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[6] *Sunset Park Church of God, Inc. v. Gay*, 916 So. 2d 918 (Fla. 5th DCA 2005) (Judge Sharp concurring specially).

43. Additionally, some testimony was elicited from both Ms. Brown and Mr. Elkind with regard to whether there are attorneys in the area that handle cases involving 57.105 or fraudulent claims, but this testimony was very limited.

44. The question is not whether there are attorneys in a market that perform work for a specific party; instead the question is whether there are in fact attorneys in the relevant market area that are competent in the subject matter.

45. As it relates to the first exception, State Farm has not met its burden to establish the absence of competent counsel in the relevant market area sufficient to support the award of travel time.

46. The second exception to the general bar against the award of attorney travel time the Court considered is whether travel time should be awarded as a sanction.

47. In *Eve's Garden, Inc. v. Upshaw & Upshaw, Inc.*, 801 So. 2d 976 (Fla. 2nd DCA 2001), the appellate court affirmed the trial court's award of travel time reimbursement, which was imposed as a sanction after the defendant failed to comply with the trial court's discovery order, necessitating an additional, and otherwise unnecessary hearing. Similarly, in *Palm Beach Polo Holdings, Inc., v. Stewart Title Guaranty Company* 132 So. 3d 858 (Fla. 4th DCA) the Court acknowledged that travel time is generally not compensable, but found that an award of attorney fees against a party that unreasonably rejects a settlement offer is

a sanction that may include travel time.

48. Admittedly, the holdings in *Eve's Garden* and *Palm Beach Polo* do not specifically address the award of travel time as a sanction under section 57.105 in connection with a finding that a claim was not supported in fact or law when initially presented. However, the plain language of section 57.105(a) and the cases interpreting it, clearly and unambiguously identify as a "sanction," the right of the party to recover reasonable attorney's fees.

49. In the context of the facts of this case, the Court finds that attorney travel time is compensable as a sanction.

Fees for Fees

50. The general rule is that, after a finding of entitlement to attorney fees, attorney time spent litigating the amount of fees ("fees for fees") is not compensable. However, there are exceptions to that general rule. One of those exceptions is that fees for fees may be compensable as a "sanction."

51. In support its argument that the Court may award fees for fees as a sanction, State Farm relied upon the cases of *Bennet v. Berges*, 50 So. 3d 1154 (Fla. 4th DCA 2010) and *Condren v. Bell*, 853 So. 2d 609 (Fla. 4th DCA 2003). Both *Bennett* and *Condren* approved the award of fees for fees as a sanction.

52. The Morgan Group countered that in *Austin & Laurata, P.A.v. State Farm Florida Insurance Company*, 229 So. 3d 911 (Fla. 5th DCA 2017), the

District Court specifically prohibited the award of fees for fees when the basis of the fee is 57.105.[7] For its part, *Laurata* cited to *Wood v. Haack*, 54 So. 3d 1082, 1074 (Fla. 4th DCA 2011), wherein the Fourth District held that fees for fees were not compensable under 57.105.

53. In *Condren,* the basis for the sanction was not made clear, but in *Cox v. Great American Ins. Co.*, 88 So. 3d 1048 (Fla. 4th DCA 2012), the Fourth DCA expounded upon its decision and addressed the distinction between fees for fees as a sanction under *Condren* versus the prohibition of fees for fees in *Wood.*

54. The Court explained that in *Condren*, the fees for fees were awarded as a sanction under the inherent authority of the court, pursuant to "the inequitable conduct doctrine." In *Cox*, however, the court was considering fees pursuant to Rule 1.730(c), which it analogized to section 57.105. While acknowledging that the rule, the statute, and the inequitable conduct doctrine could all be classified as sanctions, the Court explained that, "when it comes to awarding fees for fees, not all sanctions are created equal." *Cox*, 88 So. 3d at 1050. *Cox* concluded that since sanctions are not recoverable under section 57.105, and Rule 1.730(c) appears to allow for sanctions after relatively mild transgressions, pursuant to *Wood*, fees for fees are not justified under rule 1.730(c) for conduct that does not come close to triggering entitlement under the inequitable conduct doctrine.

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[7] The *Laurata* Court made this pronouncement in a footnote as an advisory to the trial court.

55. Since State Farm's claim arises from section 57.105, Florida Statutes, this Court is constrained to agree with the Morgan Group that, based upon the above-referenced cases, fees for fees may not be properly awarded in the instant case.

56. In reaching this conclusion, the Court is mindful that State Farm was prepared to deal with the issue of entitlement and the amount of fees in one hearing, and that, at the initial hearing on entitlement, it was State Farm that called to the Court's attention that the interests of Kidwell and its attorneys had become adverse.

57. Moreover, the Morgan Group spent the majority of its time during the hearings on the amount of fees rearguing issues related to entitlement and eliciting testimony that was irrelevant, inadmissible, or of little value to the Court in determining the amount of fees. At the conclusion of the hearing on the proper amount of fees, the Morgan Group tendered to the Court a 25-page memorandum of law raising arguments not raised in open court and citing facts not supported by the record.

58. Thus, if not for the case law prohibiting the Court from awarding fees for fees under 57.105 once entitlement is determined, the Court would find that as a "sanction," fees for fees should be awarded to State Farm in this action for the conduct of the opposing party.

Overall Amount of Fees

59. This court recognizes that, even though it rejected arguments related to disallowing fees under the four buckets identified by Mr. Elkind, the court still has an independent obligation to review billing entries to determine whether the work was reasonable and necessary to move the case forward. This independent review is not unfettered and there must be a basis in the record to support the court's findings.[8]

60. In *Centex-Rooney Const. Co. Inc. v. Martin County*, 725 So. [space] 2d 1255 (Fla. 4th DCA 1999), the Court explained that the party moving for fees bears the initial burden of establishing the fee to be awarded. The Court finds that State Farm met this initial burden through the testimony of Ms. Brown.

61. Once the party seeking fees has met its initial burden, *Centex* provides that it is the obligation of the opponent of the fee to point out with specificity which hours should be deducted with reasonable precision.

62. The issue in this case is that, while Kidwell and the Morgan Group raised a number of general legal issues, with very limited exception, there was a failure by both parties to present any evidence as to the specific entries that were not compensable.

63. The court has reviewed each and every entry on the invoices

[8] *Sunset Park Church of God, Inc., v. Gay,* 916 So. 2d 918 (Fla. 5th DCA 2005) (Judge Sharp concurring specially with opinion).

submitted into evidence by State Farm, and in conformity with and in consideration of the evidence presented, and all factors enumerated both in the Florida Bar Code of Ethics 4-1.5, and in the case of *Florida Patients Compensation Fund v. Rowe*, 472 So. 2d 1145 (Fla. 1985), the Court finds that:

A. The number of hours reasonably expended by Attorney Curt Allen on behalf of State Farm is 124.2 hours and a reasonable hourly rate for the services performed is $220.00 per hour, and, therefore the total sum of **$ 27,324.00** is a reasonable fee for the services of Attorney Curt Allen in this action.

B. The number of hours reasonably expended by Attorney Brian Hohman on behalf of State Farm is 80.5 hours and a reasonable hourly rate for the services performed is $195.00 per hour, and, therefore the total sum of **$15,697.50** is a reasonable fee for the services of Attorney Brian Hohman in this action.

C. The number of hours reasonably expended by Attorney Alex Cayer on behalf of State Farm is 17.7 hours and a reasonable hourly rate for the services performed is $195.00 per hour, and, therefore the total sum of **$3,451.50** is a reasonable fee for the services of Attorney Alex Cayer in this action.

D. The number of hours reasonably expended by Attorney Sean Hernandez behalf of State Farm is 55.7 hours and a reasonable hourly rate for the services performed is $195.00 per hour, and, therefore the total sum of **$10,861.50** is a reasonable fee for the services of Attorney Sean Hernandez in this action.

E. The number of hours reasonably expended by Attorney Mohammad Mubarak on behalf of State Farm is 4.7 hours and a reasonable hourly rate for the services performed is $195.00 per hour, and, therefore the total sum of **$916.50** is a reasonable fee for the services of Attorney Alex Cayer in this action.

F. The number of hours reasonably expended by Paralegal Melissa Lopretto on behalf of State Farm is 18 hours and a reasonable hourly

rate for the work performed by the paralegal is $95.00 per hour, and, therefore the total sum of **$1,710.00** is a reasonable fee for the paralegal services performed on behalf of State Farm.

G. State Farm's expert, Attorney Janet Brown was necessary to render an opinion relating to the reasonable number of hours reviewing file materials, preparing for and providing expert testimony and is entitled to expert fee of **$9,720.00.**

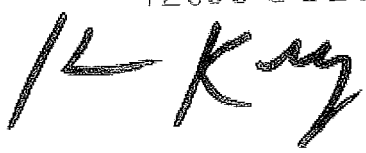
H. Total taxable costs in this action inclusive of the expert fee are **$18,734.18.**

IT IS THEREFORE ORDERED AND ADJUDGED that pursuant to section 57.105, Florida Statutes, Defendant, State Farm Florida Insurance Company recover attorney fees, in equal halves, from The Morgan Law Group, P.A., 55 Merrick Way, Suite 404, Coral Gables, Florida 33134, and The Kidwell Group, LLC, 941 West Morse Boulevard, Suite 100, Winter Park, Florida 32789, in the total sum of **$59,961.00** which shall bear interest at the applicable statutory rate, for which let execution issue.

IT IS FURTHER ORDERED AND ADJUDGED that pursuant to section 57.041, Florida Statutes, and, Florida Rule of Civil Procedure 1.420(c), Defendant, State Farm Florida Insurance Company recover costs of this action from The Kidwell Group, LLC, 941 West Morse Boulevard, Suite 100, Winter Park, Florida 32789 in the total sum of **$18,734.18** which shall bear interest at the applicable statutory rate, for which let execution issue.

DONE AND ORDERED in Chambers, Volusia County, Florida.

7/28/2020 12:04 PM 2015
12056 CODL



e-Signed 7/28/2020 12:04 PM 2015 12056 CODL

CHRISTOPHER KELLY
County Court Judge

Conformed copies to:
Curt Allen, Attorney for State Farm
Thomas J. Morgan, Sr., Attorney for the Morgan Group
Chad Barr, Attorney for the Kidwell Group
Kimberly Simoes, Attorney for the Kidwell Group

EXHIBIT

3

IN THE COUNTY COURT OF THE
SEVENTH JUDICIAL CIRCUIT IN AND
FOR VOLUSIA COUNTY, FLORDA

CELPA CLINIC, INC. A/A/O
ADRIANA AGOSTO,
Plaintiff,

v.

GEICO INDEMNITY COMPANY,
Defendant.

_____/

CASE NO.: 2018-10436 CODL
DIVISION: 71

ORDER GRANTING PLAINTIFF'S MOTION FOR SUMMARY DISPOSITION REGARDING "BA" AND DENYING DEFENDANT'S COMPETING MOTION FOR SUMMARY DISPOSITION

THIS CAUSE, having come before the Court on Plaintiff's Motion for Summary Disposition regarding "BA" and Defendant's Motion for Summary Disposition, and the Court having reviewed the Motions, having heard argument of counsel and otherwise being fully advised of the premises herein, finds as follows:

Introduction

In this action for the recovery of Personal Injury Protection (PIP) benefits, the legal issue before this Court is whether Defendant properly reimbursed Plaintiff according to the terms of its policy of insurance, Specifically, the Court must determine whether the subject policy permits Defendant to apply 20% co-insurance reduction to bills submitted for reimbursement charged in an amount less than 200% of the participating physicians fee schedule of Medicare Part B. Defendant applied this 20 % co-insurance reduction and reimburse these codes at 80% of the amount billed using the explanation code "BA" ("Billed Amount").

Plaintiff contends the plain language of the policy requires Defendant to pay 100% of the amount charged for those codes billed at less than 200% of the participating physicians fee schedule of Medicare Part B. Defendant contends the policy and the PIP statue authorize it to pay these codes at 80%. It is undisputed that Defendant *allowed* the full amount charged by the Plaintiff, but only *paid* 80% of those charges.

The Policy Language

The policy states, in pertinent part:

PAYMENT WE WILL MAKE

The Company will pay in accordance with the Florida Motor Vehicle No Fault Law (as enacted,

amended, or newly enacted), and where applicable in accordance with all fee schedules contained in the Florida Motor Vehicle No Fault Law, to or for the benefit of the injured person:

(A)Eighty percent (80%) of medical benefits which are medically necessary, pursuant to the following schedule of maximum charges contained in the Florida Statues §627.736(5) (a)1., (a)2. and (a)3;

* * *

6. For all other medical services, supplies, and care 200 percent of the allowable amount under:

(I) The participating physicians fee schedule of Medicare Part B...

* * *

However, if such services, supplies, or care is not reimbursable under Medicare Part B (as provided in section (A) 6. above), we ill limit reimbursement to eighty percent (80%) of the maximum reimbursable allowance under worker's compensation, as determined under Florida Statues § 440.13 rules adopted thereunder which are in effect at the time such services, supplies, or care is provided. Services, supplies, or care that is not reimbursable under Medicare or workers' compensation is not required to be reimbursed by us.

* * *

A charge submitted by a provider, for an amount less than the amount allowed above, shall be paid in the amount of the charge submitted.

FLPIP (07-15), p.3 of 11 (emphasis added)

Issues of Law

It has long been a tenet of Florida Insurance law that an insurer, as the writer of an insurance policy, is bound by the language of the policy, which is to be construed liberally in favor of the insured and strictly against the insurer. *Berkshire Life Ins. Co. v. Adelberg*, 698 So. 2d 828, 830 (Fla. 2007). Where the language is clear and unambiguous, a court must interpret it in accordance with the plain meaning so as to give effect to the policy as written. *Washington Nat'l Ins. Corp. v. Ruderman,* 11 So. 3d 943, 948 (Fla. 2013). If the language is susceptible to more than one interpretation – one that provides coverage and one that limits it – then the language is ambiguous and is to be construed in favor of the insured and against the insurer. *Id.*

Insurers are bound by the language of their own choosing, regardless of whether under the policy language results in a good or bad bargain for the insurer. See, *Adelberg,* 698 So. 2d at 830. If the insurance company meant something different from the plain text of the policy, then it is required to

unambiguously draft the contract accordingly. *Id.* Courts are not permitted to revise an otherwise valid insurance policy to make it more reasonable or advantageous for an insurance company that used imprecise language providing coverage that is greater than coverage the insurance company may have originally contemplated. *Slack v. State Farm Mut. Auto Ins. Co.*, 507 So. 2d 617, 619 (Fla. 3d DCA 1987.) In short, the insurer – not the insured – bears the risk of poorly drafted or imprecise language.

The policy provides:

> **A charge submitted by a provider, for an amount less than the amount allowed above, shall be paid in the amount to the charge submitted.**

This policy language does not indicate that it is conditional in any way and read independently is clear and unambiguous on its face. The policy requires Defendant to pay 100% of the amount charged for those services billed at less than 200% of the participating physicians fee schedule of Medicare Part B.

Even if the court were to find the policy language ambiguous, the Court would be required to construe the policy against the insurer, resulting in the same interpretation as set forth above.

At the hearing on Plaintiff's motion, Defendant stipulated to the reasonableness of Plaintiff's charges, that the services rendered unto the insured by Plaintiff were medically necessary and causally related to a covered motor vehicle accident. Defendant raised no affirmative defenses.

It is therefore ORDERED AND ADJUDGED:

A. Plaintiff's Motion for Summary Disposition is hereby **GRANTED.**

B. Defendant's Motion for Summary Disposition is hereby **DENIED.**

DONE AND ORDERED in Chambers at DeLand, Volusia County, Florida.

8/15/2018 4:23 PM 2018 10436
CODL

e-Signed 8/15/2018 4:23 PM 2018 10436 CODL

Christopher Kelly, County Court Judge

Copies furnished via eservice/U.S. Mail delivery to:
Brooke Boltz, Esq.
Megan Lindsey, Esq.

IN THE COUNTY COURT OF THE SEVENTH JUDICIAL CIRCUIT IN AND FOR VOLUSIA COUNTY, FLORIDA

ACCIDENT & INJURY CLINIC, INC.
A/A/O ASHLEY HARRIS,

CASE NO.: 2017 10858 CODL

PLAINTIFF,

v.

GEICO INDEMNITY COMPANY,

DEFENDANT.
_____/

AMENDED
ORDER GRANTING PLAINTIFF'S MOTION FOR SUMMARY DISPOSITION, DENYING DEFENDANT'S MOTION FOR FINAL SUMMARY DISPOSTION AND ENTERING FINAL JUDGMENT IN FAVOR OF PLAINTIFF
*(Amended to Correct Scrivener's Error)

THIS CAUSE, having come before the Court for consideration on the parties' competing Motions for Summary Disposition, and the Court having reviewed the Motions, having heard argument of counsel and otherwise being fully advised of the premises herein, finds as follows:

Introduction

In this action for the recovery of Personal Injury Protection (PIP) benefits, the legal issue before this Court is whether Defendant properly reimbursed Plaintiff according to the terms of its policy of insurance. Specifically, the Court must determine whether the subject policy permits Defendant to apply a 20% co-insurance reduction to bills submitted for reimbursement charged in an amount less than 200% of the participating physicians fee schedule of Medicare Part B. Defendant applied this 20% co-insurance reduction and reimbursed these codes at 80% of the amount billed using the explanation code "BA" ("Billed Amount").

Plaintiff contends the plain language of the policy requires Defendant to pay 100% of the amount charged for those codes billed at less than 200% of the participating physicians fee

schedule of Medicare Part B. Defendants contends the policy and the PIP statute authorize it to pay these codes at 80%. It is undisputed that Defendant *allowed* the full amount charged by the Plaintiff, but only *paid* 80% of those charges.

The Policy Language

The policy states, in pertinent part:

> PAYMENTS WE WILL MAKE
> The Company will pay in accordance with the Florida Motor Vehicle No Fault Law (as enacted, amended, or newly enacted), and where applicable in accordance with all fee schedules contained in the Florida Motor Vehicle No Fault Law, to or for the benefit of the injured person:
>
> (A) Eighty percent (80%) of medical benefits which are medically necessary, pursuant to the following schedule of maximum charges contained in the Florida Statutes §627.736(5) (a)1., (a)2. and (a)3;
>
> * * *
>
> 6. For all other medical services, supplies, and care 200 percent of the allowable amount under:
> (I.) The participating physicians fee schedule or Medicare Part B…
>
> * * *
>
> However, if such services, supplies, or care is not reimbursable under Medicare Part B (as provided in section (A) 6. above), we will limit reimbursement to eighty percent (80%) of the maximum reimbursable allowance under workers' compensation, as determined under Florida Statutes § 440.13 and rules adopted thereunder which are in effect at the time such services, supplies, or care is provided. Services, supplies, or care that is not reimbursable under Medicare or workers' compensation is not required to be reimbursed by us.
>
> * * *
>
> **A charge submitted by a provider, for an amount less than the amount allowed above, shall be paid in the amount of the charge submitted.** (emphasis added).

Issues of Law

"It has long been a tenet of Florida Insurance law that an insurer, as the writer of an insurance policy, is bound by the language of the policy, which is to be construed liberally in

favor of the insured and strictly against the insurer." *Berkshire Life Ins. Co. v. Adelberg*, 698 So. 2d 828, 830 (Fla. 2007). "Where the language is clear and unambiguous, a court must interpret it in accordance with the plain meaning so as to give effect to the policy as written." *Washington Nat'l Ins. Corp. v. Ruderman,* 117 So. 3d 943, 948 (Fla. 2013). "If the language is susceptible to more than one interpretation – one that provides coverage and one that limits it – then the language is ambiguous and is to be construed in favor of the insured and against the insurer." *Id.*

Insurers are bound by the language of their own choosing, regardless of whether under the policy language results in a good or bad bargain for the insurer. See, *Adelberg*, 698 So. 2d at 830. If the insurance company meant something different from the plain text of the policy, then it is required to unambiguously draft the contract accordingly. *Id.* Courts are not permitted to revise an otherwise valid insurance policy to make it more reasonable or advantageous for an insurance company that used imprecise language providing coverage that is greater than coverage the insurance company may have originally contemplated. *Slack v. State Farm Mut. Auto. Ins. Co.*, 507 So. 3d 617, 619 (Fla. 3d DCA 1987. In short, the insurer – not the insured – bears the risk of poorly drafted or imprecise language.

The policy provides:

> **A charge submitted by a provider, for an amount less than the amount allowed above, shall be paid in the amount of the charge submitted.**

This policy language does not indicate that it is conditional in any way and read independently is clear and unambiguous on its face. The policy requires Defendant to pay 100% of the amount charged for those services billed at less than 200% of the participating physicians fee schedule of Medicare Part B.

Read in context of the entire policy, the Court finds the policy language ambiguous, and accordingly the Court construes the policy against the *insurer.

At the hearing on Plaintiff's motion, Defendant stipulated to the reasonableness of Plaintiff's charges, that the services rendered unto the insured by Plaintiff were medically necessary and casually related to a covered motor vehicle accident. Defendant raised no affirmative defenses.

It is therefore **ORDERED AND ADJUDGED:**

A. Plaintiff's Motion for Summary Disposition is hereby **GRANTED**.

B. Defendant's Motion for Summary Disposition is hereby **DENIED**.

C. **Final Judgment** is entered in favor of Plaintiff and Plaintiff shall recover from Defendant $726.20 plus accrued interest in the amount of $106.98 for a total of $833.18 for which let execution issue forthwith. Post judgment interest of 5.72% per annum shall be due upon this judgment pursuant to Fla. Stat. §55.03.

D. The Court finds that Plaintiff is hereby entitled to reasonable attorneys' fees and costs and reserves jurisdiction to determine that amount.

DONE and ORDERED in Chambers at DeLand, Volusia County, Florida this 25th day of June, 2018 *nunc pro tunc* the 12th day of June, 2018.

6/25/2018 11:39 AM 2017
10858 CODL

e-Signed 6/25/2018 11:39 AM 2017 10858 CODL

Christopher Kelly
County Court Judge

Copies electronically sent to:
Roger Johnson, Esq.
Joseph W. Engel Jr., Esq.

MANDATE

From

CIRCUIT COURT OF APPEAL OF VOLUSIA COUNTY, FLORIDA

SEVENTH JUDICIAL CIRCUIT

THIS CAUSE HAVING BEEN BROUGHT TO THIS COURT BY APPEAL, AND AFTER DUE CONSIDERATION THE COURT HAVING ISSUED ITS OPINION; AFFIRMED

YOU ARE HEREBY COMMANDED THAT SUCH FURTHER PROCEEDINGS BE HAD IN SAID CAUSE IN ACCORDANCE WITH THE OPINION OF THIS COURT ATTACHED HERETO AND INCORPORATED AS PART OF THIS ORDER, AND WITH THE RULES OF PROCEDURE AND LAWS OF THE STATE OF FLORIDA.

WITNESS THE HONORABLE JUDGE SEVENTH JUDICIAL CIRCUIT, IN AND FOR VOLUSIA COUNTY, FLORIDA AND THE SEAL OF SAID COURT AT DELAND, FLORIDA ON THIS 16 April 2019.

FILED
2019 APR 16 PM 12:33
CLERK OF THE CIRCUIT
CTY. COURT VOLUSIA CTY., FL
DC 43

LAURA E. ROTH
CLERK OF THE CIRCUIT COURT

By: F. Hardy

F.Hardy
Deputy Clerk

Style:GEICO Indemnity Company vs Accident & Injury Clinic, INC. a/a/o Frank Irizarry
Appeal Docket No.: 2018-10031 APCC
Lower Case No. : 2017-31735 COCI
c: Rebecca O'Dell Townsend, Esquire, Douglas H. Stein, Esquire, Lower Court

CL-0147-1701

IN THE CIRCUIT COURT OF THE SEVENTH JUDICIAL CIRCUIT
IN AND FOR VOLUSIA COUNTY, FLORIDA

GEICO INDEMNITY COMPANY,

Appellant,

v.

ACCIDENT & INJURY CLINIC, INC.
a/a/o Frank Irizarry,

Appellee.

_____/

CASE NO.: 2018-10031-APCC

Appeal from the County Court
Volusia County, Florida

Rebecca O'Dell Townsend, Esq., Tampa, Florida
Louis Schulman, Esq., Tampa, Florida
Counsel for Appellant

Douglas H. Stein, Esq., Miami, Florida
Counsel for Appellee

OPINION OF THE COURT

This matter came before this Court in its appellate capacity for review of an "Order Granting Plaintiff's Motion for Summary Disposition and Final Judgment in Favor of Plaintiff" entered on June 7, 2018, by the County Court. The Court has considered the briefs filed, reviewed the record on appeal, and heard oral argument presented by counsel.

This action began as a claim for Personal Injury Protection (PIP) benefits filed in the lower court. Frank Irizarry was involved in a motor vehicle accident on September 6, 2015. The plaintiff below, Accident & Injury Clinic, Inc. (hereinafter "AIC"), provided medical services to Irizarry as a result of the accident. Irizarry was insured for PIP benefits by the defendant below,

Geico Indemnity Company (hereinafter "GEICO"). Irizarry assigned his benefits under the GEICO policy to AIC.

AIC's charges submitted to GEICO included items which were in an amount allowed by the fee schedule and items which were an amount charged below the fee schedule. (Items charged below the fee schedule amount will be referred to as the "billed amount" or "BA.") GEICO reimbursed AIC at a rate of 80% for fee schedule amount items and BA items. There is no dispute over the 80% reimbursement rate for fee schedule amount items where Irizarry is responsible for a copay of 20%. AIC claims that GEICO's policy requires GEICO to reimburse BA items at 100%. GEICO argues that the policy provides that the reimbursement rate of BA items is 80% with Irizarry responsible for a copay of 20%. BA charges submitted by AIC totaled $3,131.00. GEICO paid 80% of BA charges or $2,504.80. The lower court found in favor of AIC for the difference ($626.20) plus interest and entered judgment in the amount of $702.23. GEICO's appeal of that Final Judgment is now before this Court.

The root of this exhaustively litigated issue (referred to as the BA issue) is the following sentence in GEICO's policy:

> "A charge submitted by a provider, for an amount less than the allowed amount above, shall be paid in the amount of the charge submitted."

GEICO argues that this sentence does not reflect who is to pay the provider, and it refers to other parts of the policy to show that GEICO is responsible to pay 80% and the insured to copay 20%. AIC accurately points out that the "PAYMENTS WE WILL MAKE" portion of the policy limits GEICO payments to 80% of fee schedule payments and does not specifically refer to BA payments. The policy makes no specific reference as to who pays BA charges. GEICO points to a document entitled "IMPORTANT NOTICE," which in pertinent part states, "The Company

will limit reimbursement of medical expenses to 80 percent of a properly billed reasonable charge..." There is a dispute as to whether this "IMPORTANT NOTICE" is a part of the policy.

The lower court found that the language in the policy was clear and unambiguous on its face and required GEICO to pay 100% of BA charges. This Court agrees with the result of the lower court but disagrees with the finding that the policy unambiguously required GEICO to pay 100% of BA charges.

The BA issue was extensively analyzed in the recent federal class action case of A & M Gerber Chiropractic LLC v. GEICO General Insurance Company, 291 F.Supp.3d 1318 (S.D. Fla. 2017). The court in A & M Gerber accurately stated that the policy provision ("A charge submitted by a provider, for an amount less than the allowed amount above, shall be paid in the amount of the charge submitted.") "...does not identify who will pay..." Id. at 1342. That court goes on to contrast the disputed provision with the language from the PIP statute:

> "If a provider submits a charge for an amount less than the amount allowed under subparagraph 1., the insurer may pay the amount of the charge submitted." Florida Statutes, Section 627.736(5)(a) 5.

That statute provides that "the insurer may pay," thereby identifying the insurer as the party who will pay the charge. A & M Gerber, at 1342. Contrary to the statutory language, the policy provision has removed the designation of the insurer as payor: "A charge submitted by a provider..., shall be paid in the amount of the charge submitted." The policy language changes the sentence in the statute from "the insurer may pay" to "a provider...shall be paid." The statute provides who will pay and the policy provides what the provider will be reimbursed.

Based upon the language of the policy and the specific disputed policy provision, it cannot be said that the provision unambiguously provides that GEICO will pay 100% of BA charges. As previously stated, the disputed "IMPORTANT NOTICE" in pertinent part reads as

follows: "The Company will limit reimbursement of medical expenses to 80 percent of a properly billed reasonable charge..." If this notice is a part of the policy, then the policy would unambiguously provide that GEICO would be responsible to pay for only 80% of the BA charges. However, if the "IMPORTANT NOTICE" is not considered a part of the policy, then the policy is silent as to who pays the BA charges.

The court in A & M Gerber found, and this Court agrees, that the "IMPORTANT NOTICE" is not part of the policy. Id. at 1338-1340. That court ultimately determined that the disputed policy provision was ambiguous, construed the provision against GEICO, and found that the provision required GEICO to pay 100% of the BA charges. Id. at 1344. The A & M Gerber court did note that the PIP statute specified that the insurer would pay BA charges, but it declined to use the statutory language to interpret the policy. Id. at 1342.

The reason this Court declines to interpret the policy as providing for GEICO to pay 100% of BA charges is simply that there is no support in the policy that justifies reading an agreement to pay 100% of BA charges into the policy. This Court does not wish to read a term into the policy which is not there. If anything, the evidence would indicate that GEICO's intent in drafting the policy was to apply the 80% rate not just to BA charges but across the board. This is evidenced by GEICO distinguishing the language of the statute from the "insurer may pay" to the "provider...shall be paid." GEICO also provided the "IMPORTANT NOTICE" which stated reimbursement would be limited to 80% by GEICO effectively across the board. There are no other provisions or language in the policy where GEICO reimburses a provider 100%. In addition, GEICO's intent was evidenced by the fact that it has consistently reimbursed BA charges at 80%.

Nevertheless, this Court agrees that the policy must be construed to provide that GEICO pays 100% of the BA charges, but only by applying the PIP statutory language to the policy. Both AIC and GEICO agree that the policy must conform to PIP statutory limitations and requirements. As previously stated, the controlling PIP provision specifically provides that if elected the insurer would pay BA charges:

> "If a provider submits a charge for an amount less than the amount allowed under subparagraph 1., the insurer may pay the amount of the charge submitted." Florida Statutes, Section 627.736(5)(a) 5.

There is nothing in this statutory language which allows an insurer to limit the BA payment to 80%. GEICO argues if the statute is read to require an insurer to pay 100% of BA charges, it would net an absurd result. The alleged absurd result occurs when GEICO is required to pay a higher amount at 100% of the BA than at 80% of the maximum rate permitted. Indeed it would cost GEICO more money, but it is not an absurd result if the legislature intended that the benefit of the lower BA payment was meant to be enjoyed by the insured as opposed to the insurer.

The statutory language identifying the insurer as the party designated to pay the BA charges must be applied to the policy language. Further, as the PIP statute does not provide for insurers to limit payment of BA charges to 80%, if the insurer elects BA payments, then the insurer pays 100% of the BA charge. The Court notes that this result still would be reached if the "IMPORTANT NOTICE" was or becomes part of the policy. Policy language limiting GEICO's payments to 80% of BA charges would conflict with the PIP statute that designates that the insurer may elect to pay the BA amount rather than the maximum payment permitted under the fee schedule amount.

In this case GEICO elected the "amount of the charge submitted" (or BA) by AIC. GEICO paid 80% of the BA instead of 100% as required. Therefore, the lower court's ruling should be upheld.

For the foregoing reasons, the lower court's Final Judgment is hereby

AFFIRMED.

DONE AND ORDERED in DeLand, Volusia County, Florida this 13th day of March, 2019.

RANDELL H. ROWE, III
CIRCUIT JUDGE

DENNIS CRAIG, Circuit Judge, concurs.

Copy to:

Rebecca O'Dell Townsend, Esq.
Louis Schulman, Esq.
Douglas H. Stein, Esq.
Kimberly P. Simoes, Esq.
Hon. David A. Cromartie, County Judge

IN THE CIRCUIT COURT OF THE SEVENTH JUDICIAL CIRCUIT
IN AND FOR VOLUSIA COUNTY, FLORIDA

GEICO INDEMNITY COMPANY,

Appellant,

v.

ACCIDENT & INJURY CLINIC, INC.
a/a/o Frank Irizarry,

Appellee.

_____/

CASE NO.: 2018-10031-APCC

ORDER DENYING APPELLANT'S MOTION FOR REHEARING, REHEARING *EN BANC*, AND CERTIFICATION OF A QUESTION OF GREAT PUBLIC IMPORTANCE

This matter came before the Court for review of the "Appellant's Motion for Rehearing, Rehearing *En Banc*, and Certification of a Question of Great Public Importance." The Court having carefully considered the motion along with the Appellee's response thereto, it is hereby

ORDERED AND ADJUDGED:

That the motion is denied.

DONE AND ORDERED in DeLand, Volusia County, Florida this 15th day of April, 2019.

Randell H. Rowe, III

RANDELL H. ROWE, III
CIRCUIT JUDGE

Copy to:

Michael A. Rosenberg, Esq.
Rebecca O'Dell Townsend, Esq.
Douglas H. Stein, Esq.

290 So.3d 980
District Court of Appeal of Florida, Fifth District.

GEICO INDEMNITY COMPANY, et al.,
Petitioners,
v.
ACCIDENT & INJURY CLINIC, INC. a/a/o Frank Irizarry, et al., Respondents.

Case Nos. 5D19-1409, 5D19-1752, 5D19-2302, 5D19-2303, 5D19-2304, 5D19-2306, 5D19-2308, 5D19-2312, 5D19-2314, 5D19-2321, 5D19-2323

Opinion filed December 20, 2019

Rehearing Denied February 26, 2020

Synopsis

Background: Medical provider which had treated insured following automobile collision, and which had received 80% of the amount it had billed to insured's automobile insurer, filed complaint asserting that it was entitled to full reimbursement of billed amount based on the plain language of the policy. After the Circuit Court, 7th Judicial Circuit, Volusia County, affirmed the county court's entry of summary judgment in favor of provider, insurer petitioned for a second-tier write of certiorari to quash decision, and subsequently filed ten additional petitions involving the same reimbursement issue. Petitions were consolidated.

[Holding:] The District Court of Appeal, Grosshans, J., held that insurer was not required to pay full amount billed even though billed amount was less than the maximum amount allowed under the statutory fee schedule.

Petition granted, order under review quashed, and remanded for further proceedings.

Procedural Posture(s): Petition for Writ of Certiorari; Motion to Quash; Motion for Summary Judgment.

West Headnotes (12)

[1] **Insurance**⇨Amounts payable in general

Statute governing personal injury protection (PIP) insurance benefits authorizes an insurer to limit reimbursement to a provider for certain charges resulting from the rendering of care and services to an insured. Fla. Stat. Ann. § 627.736.

[2] **Insurance**⇨Amounts payable in general

Statute governing personal injury protection (PIP) insurance benefits specifically authorizes an insurer to limit reimbursement to 80% of a contract's schedule of maximum charges if it provides an appropriate notice in its policy. Fla. Stat. Ann. § 627.736(5)(a).

3 Cases that cite this headnote

[3] **Certiorari**⇨Scope and Extent in General

District Court of Appeal's second-tier certiorari review is limited to those instances where the lower court did not afford procedural due process or departed from the essential requirements of law. U.S. Const. Amend. 14.

1 Cases that cite this headnote

[4] **Certiorari**⇨Existence of Remedy by Appeal or Writ of Error

District Court of Appeal's second-tier certiorari review should not be used to grant a second appeal.

[5] **Certiorari**⇨Grounds in general
Certiorari⇨Errors and irregularities

The departure from the "essential requirements of the law" necessary for the issuance of a writ of certiorari is something more than a simple legal error.

[6] **Certiorari**⇨Decisions and Proceedings of Courts, Judges, and Judicial Officers

Misinterpretation of a statute may be the basis for granting second-tier certiorari review, especially when the circuit court's appellate decision establishes a rule of general application for future cases in county court, exacerbating the effect of the circuit court's legal error.

[7] **Insurance**⇨Amounts payable in general

Under statute governing personal injury protection (PIP) insurance benefits, auto insurer was not required to pay medical provider's full billed amount, even if amount billed was less than the maximum listed in the policy's schedule of fees and charges, where policy tracked the statutory language giving an insurer the choice to pay 80% of an amount fixed through a fee schedule or the full billed amount if the amount billed was less than 80% of the statutory fee schedule. Fla. Stat. Ann. § 627.736(5)(a).

5 Cases that cite this headnote

[8] **Statutes**⇨Plain language; plain, ordinary, common, or literal meaning

A statute that is clear and unambiguous on its face requires no construction and should be applied in a manner consistent with its plain meaning.

1 Cases that cite this headnote

[9] **Statutes**⇨Construing together; harmony

It is a well-settled principle of statutory construction that all parts of a statute must be read together in order to achieve a consistent whole.

[10] **Statutes**⇨Statute as a Whole; Relation of Parts to Whole and to One Another

Statutory interpretation is a holistic endeavor; therefore the appellate court will not only focus on the text of the statute, but also must consider the relationship between the applicable statutory provisions.

[11] **Insurance**⇨Amounts payable in general

Statute governing personal injury protection (PIP) insurance benefits claims authorizes insurers to limit reimbursement to 80% of an amount fixed through a fee schedule, provided they have elected in their policies to take advantage of these reimbursement limitations. Fla. Stat. Ann. § 627.736(5)(a).

[12] **Insurance**⇨Amounts payable in general

Statute governing personal injury protection (PIP) insurance benefits gives auto insurers a choice to pay: (1) 80% of an amount fixed through a fee schedule, provided the insurer has

> elected in its policies to take advantage of these reimbursement limitations, or (2) if billed amount is less than 80% of the fee schedule (the required amount an insurer must pay), the insurer may opt to pay the lower billed amount in full. Fla. Stat. Ann. § 627.736(5)(a).
>
> 5 Cases that cite this headnote

*981 Petition for Certiorari Review of Order from the Circuit Court for Volusia County, Randell H. Rowe, III, Judge, Kathryn D. Weston, Judge, Michael S. Orfinger, Judge, Matthew M. Foxman, Judge, Steven C. Henderson, Judge, Elizabeth A. Blackburn, Judge, Karen A. Foxman, Judge, Dawn D. Nichols, Judge, Raul A. Zambrano, Judge, Sandra C. Upchurch, Judge, Dennis Craig, Judge, James Robert Clay, Judge.

Attorneys and Law Firms

Peter D. Weinstein, Thomas L. Hunker, Michael A. Rosenberg of Cole, Scott & Kissane, P.A., Plantation, and Rebecca O'Dell Townsend, Louis Schulman, and Scott W. Dutton, of Dutton Law Group, P.A., Tampa, for Petitioners.

Mark K. Delegal and Tiffany A. Roddenberry, of Holland & Knight L.L.P., Tallahassee, Amicus Curiae Brief for Personal Insurance Federation of Florida and American Property Casualty Insurance Association, in support of Petitioners.

Douglas H. Stein, of Douglas H. Stein, P.A., Miami, and Brooke Boltz, of Boltz Legal, Oviedo, for Respondents.

Opinion

GROSSHANS, J.

In its petition for writ of certiorari in case number 5D19-1409, Geico Indemnity Company ("Geico") seeks to quash a decision of the circuit court sitting in its appellate capacity. That decision affirmed a final summary judgment entered in county court in favor of one of the Respondents pursuant to Florida's personal injury protection ("PIP") statute. See § 627.736, Fla. Stat. (2017). For the reasons expressed *982 below, we grant Geico's petition and quash the circuit court's decision.

Background

[1] [2]The PIP statute authorizes an insurer to limit reimbursement to a provider for certain charges resulting from the rendering of care and services to an insured. Specifically, the PIP statute authorizes an insurer to limit reimbursement to 80% of a schedule of maximum charges if it provides an appropriate notice in its policy. See § 627.736(5)(a) 1. ("subparagraph 1"); see also § 627.736(5)(a) 5. ("subparagraph 5").

Geico issued a PIP insurance policy to Frank Irizarry. Following an automobile collision, Irizarry received medical care from the Accident & Injury Clinic, A/A/O Frank Irizarry ("the Clinic"). The Clinic sought payment from Geico for reimbursement based on an assignment of Irizarry's benefits under the Geico policy. The amount billed by the Clinic was less than the maximum listed in the policy's schedule of fees and charges. After reviewing the claim, Geico remitted 80% of the billed amount pursuant to the policy. Subsequently, the Clinic filed a complaint, claiming that it was entitled to full reimbursement of the billed amount based upon the plain language of Geico's policy, which states as follows:

> The Company will pay in accordance with the Florida Motor Vehicle No Fault Law (as enacted, amended, or newly enacted), and where applicable in accordance with all fee schedules contained in the Florida Motor Vehicle No Fault Law, to or for the benefit of the injured person:
>
> (A) Eighty percent (80%) of medical benefits which are medically necessary, pursuant to the following schedule of maximum charges contained in the Florida Statutes § 627.736(5)(a) 1., (a)2. and (a)3.:
>
> .... [Schedule of fees]
>
> A charge submitted by a provider, for an amount less than the amount allowed above, shall be paid in the amount of the charge submitted ....

(Emphasis added).

The Clinic sought summary judgment, arguing that Geico was precluded from limiting its reimbursement to 80% of the billed amount because the billed amount was less than the schedule of maximum charges in the policy. Relying

on section 627.736, Geico argued that its policy tracked the statute's text and any deductions were properly applied.

The county court granted the Clinic's motion for summary judgment, finding as follows:

> [T]he language of the policy [is] clear and unambiguous on its face as to the BA [Billed Amount] issue. The policy requires GEICO [to] pay the full amount of the charge submitted for those charges that are submitted in an amount which is less than 200% of the participating physicians fee schedule of Medicare Part B.

Geico appealed the final order to the circuit court, arguing—as it had in the county court—that it was not required by its policy language or by statute to pay more than 80% of the billed amount, even if the billed amount was less than the schedule of maximum charges as listed in its policy or the statute. The circuit court agreed with Geico that its policy did not unambiguously require full payment of the billed amount. However, the circuit court affirmed the county court's ruling on the basis that the plain language of section 627.736(5) precluded the insurer from reducing the reimbursement amount. Specifically, the circuit court noted:

> [T]he controlling PIP provision specifically provide[s] that if elected the insurer ***983** would pay BA charges: "If a provider submits a charge for an amount less than the amount allowed under subparagraph 1., the insurer may pay the amount of the charge submitted." Florida Statutes, Section 627.736(5)(a) 5. There is nothing in this statutory language which allows an insurer to limit the BA payment to 80%.

Geico now petitions for a writ of certiorari, arguing that the circuit court departed from the essential requirements of law by misinterpreting section 627.736(5) to mandate that an insurer must reimburse the full amount billed, where the amount billed is less than the maximum allowed under the statutory fee schedule. The Clinic argues that the circuit court properly interpreted the statute by finding when a provider bills at an amount lower than the statutory fee schedule, the insurer is precluded from applying any deduction and must pay the bill in full.

Post-Petition Proceedings

Since the filing of this petition, Geico has filed ten other petitions for writ of certiorari involving the same reimbursement issue. In each underlying case, the circuit court affirmed a final summary judgment in favor of a provider, citing to the Irizarry decision. For purposes of review, we have consolidated these ten petitions with the initial petition.

Standard for Second-Tier Certiorari Review

[3] [4] [5] [6]Our second-tier certiorari review "is limited to those instances where the lower court did not afford procedural due process or departed from the essential requirements of law," and it "should not be used to grant a second appeal." Allstate Ins. Co. v. Kaklamanos, 843 So. 2d 885, 889 (Fla. 2003). In this case, we focus on the second requirement. "[T]he departure from the essential requirements of the law necessary for the issuance of a writ of certiorari is something more than a simple legal error." Id. However, the misinterpretation of a statute "may be the basis for granting certiorari review." Id. at 890; see also State Farm Mut. Auto. Ins. Co. v. Rhodes & Anderson, D.C., P.A., 18 So. 3d 1059, 1061 (Fla. 2d DCA 2008). This is especially true when the "circuit court's [appellate] decision establishes a rule of general application" for future cases in county court, "thus exacerbating the effect of the [circuit court's] legal error." Progressive Express Ins. Co. v. McGrath Cmty. Chiropractic, 913 So. 2d 1281, 1287 (Fla. 2d DCA 2005); see also United Auto. Ins. Co. v. Santa Fe Med. Ctr., 21 So. 3d 60, 63 (Fla. 3d DCA 2009); State Farm Fla. Ins. Co. v. Lorenzo, 969 So. 2d 393, 398 (Fla. 5th DCA 2007).

Analysis

[7]With this framework in mind, we now address the following question: Does the plain language of the PIP statute preclude an insurer from limiting its reimbursement to 80% of the total billed amount when the amount billed is less than the statutory fee schedule?

[8] [9]A statute that is clear and unambiguous on its face requires no construction and should be applied in a manner consistent with its plain meaning. See Universal Prop. & Cas. Ins. Co. v. Colosimo, 61 So. 3d 1241, 1243 (Fla. 3d DCA 2011). It is a well-settled principle of statutory construction that "all parts of a statute must be read together in order to achieve a consistent whole." Forsythe v. Longboat Key Beach Erosion Control Dist., 604 So. 2d 452, 455 (Fla. 1992); see also Giamberini v. Dep't of Fin. Servs., 162 So. 3d 1133, 1136 (Fla. 4th DCA 2015) (" 'A statute should be interpreted to give effect to every clause in it, and to accord meaning and harmony to all of its parts.' A single ***984** word or provision of a statute cannot be read in isolation." (first quoting State ex rel. City of Casselberry v. Mager, 356 So. 2d 267, 269 n.5 (Fla. 1978); and then citing Jones v. ETS of New Orleans, Inc., 793 So. 2d 912, 915 (Fla. 2001))).

[10] [11]Because statutory interpretation is a holistic endeavor, see United Sav. Ass'n of Tex. v. Timbers of Inwood Forest Assocs., Ltd., 484 U.S. 365, 371, 108 S.Ct. 626, 98 L.Ed.2d 740 (1988), we not only focus on the text of the statute, but also must consider the relationship between the applicable statutory provisions. Subsection five of section 627.736 concerns charges for services and supplies rendered to those insured under a PIP policy. As for payment of the charges, the statute authorizes insurers to limit reimbursement to 80% of an amount fixed through a fee schedule, see § 627.736(5)(a)1.a.–f., provided that they have elected in the policies to take advantage of these reimbursement limitations, see § 627.736(5)(a) 5. And, as pertinent here, subparagraph 1 provides:

> 1. The insurer may limit reimbursement **to 80 percent of the following schedule** of maximum charges:
>
> ....
>
> f. For all other medical services, supplies, and care, 200 percent of the allowable amount under:
>
> (1) The participating physicians fee schedule of Medicare Part B ....

§ 627.736(5)(a)1.f.(1) (emphasis added).

[12]In subparagraph 5, the statute further provides: "If a provider submits a charge for an amount less than **the amount allowed under subparagraph 1**, the insurer **may** pay the amount of the charge submitted." § 627.736(5)(a) 5. (emphasis added). Thus, in considering the statute as a whole, we conclude that "the amount allowed under subparagraph 1" necessarily encompasses 80% of the applicable fee schedule option. Accordingly, if the billed amount *is less than 80% of the fee schedule* (the required amount an insurer must pay), the insurer may opt to pay the lower billed amount in full.

In the Irizarry decision, the circuit court held that "the amount allowed under subparagraph 1" referred only to the fee schedule. As seen from the analysis above, this holding was erroneous and a misinterpretation of the PIP statute.

Accordingly, we conclude that certiorari relief is appropriate as the circuit court failed to apply the correct law. We grant Geico's consolidated petitions, quash the circuit court's Irizarry decision as well as the ten circuit court decisions consolidated in this review, and remand for proceedings consistent with this opinion.

PETITIONS GRANTED; ORDERS UNDER REVIEW QUASHED; and REMANDED for further proceedings.

EDWARDS and HARRIS, JJ., concur.

All Citations

290 So.3d 980, 44 Fla. L. Weekly D3045

End of Document

EXHIBIT

4

IN THE COUNTY COURT OF THE
SEVENTH JUDICIAL CIRCUIT, IN AND
FOR VOLUSIA COUNTY, FLORIDA

CASE NO.: 2014 20479 CONS
DIVISION: 71

CENTRAL FLORIDA MEDICAL
AND CHIROPRACTIC CENTER
a/a/o RONALD SEALEY,

Plaintiff,

vs.

PROGRESSIVE AMERICAN
INSURANCE COMPANY,

Defendant.

_____ /

ORDER GRANTING DEFENDANT'S MOTION FOR SUMMARY FINAL DISPOSITION AND DENYING PLAINTIFF'S MOTION FOR FINAL SUMMARY DISPOSITION

THIS MATTER having come before the Court on Plaintiff's and Defendant's competing motions for Summary Final Disposition and this Court having heard arguments of counsel, and being otherwise fully advised, finds as follows:

UNDISPUTED FACTS

1. On August 21, 2013, Defendant, Progressive American Insurance Company's ("Progressive"), insured, Ronald Sealey ("Mr. Sealey"), was involved in a motor vehicle accident.

2. At the time of the accident, Mr. Sealey was insured for $10,000.00 in Personal Injury Protection benefits with Progressive.

3. Mr. Sealey reported the accident to Progressive on September 3, 2013, and upon reporting the claim advised Progressive that he had pain in his right shoulder, left knee, and left wrist.

4. Mr. Sealey ultimately sought medical care with the Plaintiff, Central Florida Chiropractic and Medical Center's ("CFMC") facility eighteen (18) days after the motor vehicle accident.

5. On September 9, 2013, Mr. Sealey first sought medical care from CFMC and that bill was submitted to Progressive.

In response to the medical bill for September 9, 2013, Progressive placed the bill in "pending" until Progressive completed its coverage investigation.

6. Mr. Sealey continued to seek medical care and attention for his injuries at CFMC and was also evaluated by Dr. Harold Pearson, a board certified orthopedic surgeon on October 25, 2013.

7. Dr. Pearson diagnosed Mr. Sealey with a partial tear of the supraspinatus, Grade 1-2 AC tear and impingement secondary to inflammation of the rotator cuff.

8. In addition, Dr. Pearson diagnosed Mr. Sealey with multiple tears of the medial and lateral menisci of the left knee and determined that Mr. Sealey's

condition constituted an "emergency medical condition."

9. Dr. Pearson also attested that it was not uncommon for individuals that have an acute injury to the rotator cuff or menisci of the knees to not seek medical treatment for an extended period of time.

10. Further, Dr. Pearson had observed patients who have suffered these injuries and not sought medical intervention for many months, as many patients believe the pain and soreness will resolve.

11. Progressive denied payment for all medical bills submitted for Mr. Sealey because Mr. Sealey did not seek initial services "within 14 days after the motor vehicle accident" as required §627.736(1)(a), Florida Statutes (2013) and the terms of Progressive's policy.

PLAINTIFF'S ARGUMENT

Plaintiff argues that the fourteen (14) day treatment requirement is unconstitutional facially and as applied to Mr. Sealey as a violation of his rights to due process and equal protection. Plaintiff further argued that Mr. Sealey was denied his right to access the courts and that Defendant waived the fourteen day requirement by failing to certify coverage to Mr. Sealey.

DFENDANT'S ARGUMENT

Defendant moved for Summary Disposition and requested that the Court find that Plaintiff was not entitled to payment of Personal Injury Protection

benefits because Mr. Sealey did not seek treatment for initial services and care within fourteen days after the motor vehicle accident, as required under Florida Statute 627.736 (1)(a) (2013) and the subject policy of insurance.

ANALYSIS AND CONCLUSIONS OF LAW

The section of Florida Statutes at issue in this case is §627.736(1)(a), which provides:

> **(1) Required benefits.**--An insurance policy complying with the security requirements of s. 627.733 must provide personal injury protection to the named insured, relatives residing in the same household, persons operating the insured motor vehicle, passengers in the motor vehicle, and other persons struck by the motor vehicle and suffering bodily injury while not an occupant of a self-propelled vehicle, subject to subsection (2) and paragraph (4)(e), to a limit of $10,000 in medical and disability benefits and $5,000 in death benefits resulting from bodily injury, sickness, disease, or death arising out of the ownership, maintenance, or use of a motor vehicle as follows:
>
> (a) *Medical benefits.*--Eighty percent of all reasonable expenses for medically necessary medical, surgical, X-ray, dental, and rehabilitative services, including prosthetic devices and medically necessary ambulance, hospital, and nursing services ***if the individual receives initial services and care pursuant to subparagraph 1. within 14 days after the motor vehicle accident.*** (Emphasis added).

Standard of Review- Constitutional Challenge

A legislative act carries a strong presumption in favor of validity. *Ellis v. Hunter,* 3 So.2d 373 (Fla. 5th DCA 2009). A party challenging the constitutionality of a statute carries a heavy burden of establishing that the statute bears no reasonable relation to a permissible legislative objective. *State v. Powell,* 497 So.2d 1188 (Fla. 1986). It is the Court's obligation to resolve all doubt as to the validity of the Statute in favor of its constitutionality. *State v. Lick,* 390 So.2d 52

(Fla. 1980). Thus, "the 'unconstitutionality must appear beyond all reasonable doubt before a statute is condemned.' In addition, Courts will not declare a statute unconstitutional where the statute is capable of being construed in a constitutional manner." *Ellis* at 379.

Due Process

Plaintiff challenges the requirement that an individual receive treatment within fourteen days of a motor vehicle accident as being a violation of substantive due process. Specifically, Plaintiff alleged that the fourteen day treatment requirement is an arbitrary, discriminatory, and oppressive limitation that bears no rational relationship to a permissible legislative objective.

In determining whether a permissible legislative objective exists, the Court must look to the evidence arising from the record of the case. *Powell* at 1190.

At the summary judgment hearing , the Defendant presented evidence in the form of *Florida Office of Insurance Regulation Report on Review of 2011-Personal Injury Protection Data Call- April 11, 2011, Office of the Insurance Consumer Advocate Report on Florida Motor Vehicle No-Fault Insurance (Personal Injury Protection) – December 2011, Florida Office of Insurance Regulation Report on Review of the Data Call to House Bill 119 – Motor Vehicle*

Personal Injury Protection- January 1, 2015 and *House of Representatives Final Bill analysis for CS/CS/HB119 dates May 7, 2012.*

A review of the record before the Court reflects that in enacting the current PIP legislation, the legislature was seeking to curtail fraud and abuses associated with No-Fault Insurance coverage and pass the savings on to consumers through reduced premiums. The Court finds this to be a permissible legislative objective.

Further, the record before the Court also demonstrates, that although by no means overwhelming, the statutory amendments appear to be furthering the stated legislative objective. The Office of Insurance Regulation announced on January 22, 2014 that in 2013 overall premiums were down on average 13.2%. In addition, on January 1, 2015 the Office of Insurance Regulation published the results of an independent consultant's study showing that the fourteen day treatment requirement specifically provided a -0.8% impact to total savings. Admittedly, it is not clear from the report how the -0.8% was arrived at, notwithstanding, it is the only evidence before the Court. Plaintiff produced no evidence to refute that the requirement that an injured party seek treatment within fourteen days of a motor vehicle accident bears some relationship to the stated and permissible legislative objective.[1]

[1] The Court notes that the specific statistical support for these objectives is derived from post enactment analysis.

Equal Protection

Plaintiff also challenges the requirement that an individual receive treatment within fourteen days of a motor vehicle accident as being a violation of equal protection. Plaintiff contends that the creation of two classes of individuals; those who are eligible for PIP benefits based on treatment within fourteen days of the motor vehicle accident, and those that do not seek treatment within the fourteen days and are not eligible for PIP benefits, bears no rational relationship to a legitimate governmental interest.

The classification at issue does not involve a fundamental right or suspect class, and because of this, the statute is subject to the rational relationship test. *Warren v. State Farm*, 899 So.2d 1090 (Fla. 2005). In applying the rational relationship test, this Court is required to determine (1) whether the challenged statute serves a legitimate governmental purpose and (2) whether it was reasonable for the legislature to believe that the challenged classification would promote that purpose.

As set forth previously, the legislative purposes in enacting this statute was to curtail fraud and abuse associated with No-Fault Insurance coverage and pass the savings on to consumers through reduced premiums. Based on the record before the Court, the 14 day treatment requirement has in fact had an impact on

total savings and therefore it was reasonable for the Legislature to believe that the challenged classification would promote the stated governmental purposes.

As Applied Challenge-

The Plaintiff also contends that the requirement that an individual receive treatment within fourteen days of a motor vehicle accident is violation of substantive due process and equal protection as applied to Mr. Sealey.

In undertaking an as-applied challenge, the court must consider the facts specific to this case to determine whether the 14 day requirement can be fairly used to deny Mr. Sealey coverage. *State v. Kahn* 718 So.2d 893 (Fla. 1st DCA 1998).

In support of the as-applied challenge, the Plaintiff provided evidence through the Affidavits of Mr. Sealey and Harold Pearson, M.D. that Mr. Sealy suffered significant injuries as a result of the motor vehicle accident of August 21, 2013. The Affidavit of Dr. Pearson also established that it would not be uncommon for someone in Mr. Sealy's position to know that he had suffered an injury that required medical care and attention within fourteen (14) days.

However, Mr. Sealey admitted in his affidavit that he had pain the day of the accident and continual pain over the next two weeks. It appears from the record that Mr. Sealey had a reasonable belief that he was injured, yet, Mr. Sealey chose not to seek any medical treatment within 14 days of his motor vehicle accident.

The Statute and Progressive Policy in effect at the time of Mr. Sealey's motor vehicle accident clearly set forth that he was required to seek medical treatment within 14 days of the accident. "[E]very one person is presumed to know the law...and ignorance of the law is no excuse." *Ellis* at 379. "[S]ome inequality in result is not enough to vitiate on due process grounds a legislative classification ground in reason". *Lasky,* 296 So.2d 9 at 18. The Court is not persuaded that the facts of this case render the statute as applied to Mr. Sealey.

Right of Access to Courts

No person is denied access to the courts pursuant to the fourteen day eligibility requirement. Rather, access is regulated by the requirement that treatment be sought within fourteen days following a motor vehicle accident. Assuming that this requirement is met, the injured person has full access to the courts which is consistent with the intent of the Legislature in enacting the amendments to the PIP statute.

Further, in the case at hand, Mr. Sealey has a reasonable alternative to access courts through a cause of action against the tortfeasor if he so chooses. While the act may result in some inequality, the right to access courts has not been completely abolished.

Waiver

Regarding Plaintiff's argument that Defendant waived the fourteen day requirement by failing to "certify coverage" to Mr. Sealey. There is no requirement in the PIP Statute that an insurer has a duty to "certify" PIP coverage.

The plain language of the statute does require an insured to treat within fourteen days after the motor vehicle accident to be entitled to coverage. The premise that he did not seek treatment within the fourteen days because coverage had not been certified, but sought treatment on the eighteenth day, when coverage had still not been certified, is not a persuasive argument for waiver. The Court finds Defendant did not waive the fourteen day requirement.

Accordingly, it is hereby ORDERED and ADJUDGED that:

A. Defendant's Motion for Summary Final Disposition is GRANTED; and

B. Plaintiff's Motion for Summary Final Disposition is DENIED; and

C. Plaintiff shall take nothing by this action and Defendant shall go hence without day; and

D. The Court reserve jurisdiction to enter such further Orders, including a determination as to entailment to and amount of attorney's fees and taxable costs.

DONE and ORDERED in Volusia County, Deland, Florida, this 8th day of May, 2015.

CHRISTOPHER KELLY
COUNTY COURT JUDGE

Copies to:

Kimberly Simoes, Esquire, 919 Biscayne Blvd. Suite 12, Deland, FL 32724

Eric Biernacki and Robert Adams, Esquire, 1 S. Orange Ave., Suite 403, Orlando, FL 32801;

IN THE CIRCUIT COURT, SEVENTH JUDICIAL CIRCUIT, IN AND FOR VOLUSIA COUNTY, FLORIDA

Appeal No.: 2015-10016-APCC
Lower Court No.: 2014-20479-CONS

CENTRAL FLORIDA MEDICAL AND CHIROPRACTIC CENTER A/A/O RONALD SEALEY,

Appellant,

vs.

PROGRESSIVE AMERICAN INSURANCE COMPANY,

Appellee.
_____/

Opinion on appeal filed: _____

Appeal from County Court
for Volusia County, Florida
Christopher Kelly, County Judge

Kimberly Simoes, Esquire
Appellant

Betsy Ellwanger Gallagher, Esquire
Counsel for Appellee

PER CURIAM.

AFFIRMED.

SANDRA C. UPCHURCH
Circuit Judge

KAREN A. FOXMAN
Circuit Judge

cc: Honorable Christopher Kelly, County Judge
Kimberly Simoes, Esquire (eService by Clerk)
Betsy Ellwanger Gallagher, Esquire (eService by Clerk)
Eric Biernacki, Esquire and Whitney E. Dort, Esquire (eService by Clerk)

MANDATE

From

CIRCUIT COURT OF APPEAL OF VOLUSIA COUNTY, FLORIDA

SEVENTH JUDICIAL CIRCUIT

THIS CAUSE HAVING BEEN BROUGHT TO THIS COURT BY APPEAL, AND AFTER DUE CONSIDERATION THE COURT HAVING ISSUED ITS OPINION; AFFIRMED

YOU ARE HEREBY COMMANDED THAT SUCH FURTHER PROCEEDINGS BE HAD IN SAID CAUSE IN ACCORDANCE WITH THE OPINION OF THIS COURT ATTACHED HERETO AND INCORPORATED AS PART OF THIS ORDER, AND WITH THE RULES OF PROCEDURE AND LAWS OF THE STATE OF FLORIDA.

WITNESS THE HONORABLE JUDGE SEVENTH JUDICIAL CIRCUIT, IN AND FOR VOLUSIA COUNTY, FLORIDA AND THE SEAL OF SAID COURT AT DELAND, FLORIDA ON THIS 6 September 2017.

(SEAL)

DIANE M. MATOUSEK
CLERK OF THE CIRCUIT COURT

BY:
Heather Brooke
Deputy Clerk

FILED
2017 SEP -6 PM 2:04
CLERK OF THE CIRCUIT & CTY. COURT VOLUSIA CTY., FL

Style: Central Florida Medical & Chiropractic Center v Progressive American Insurance Company

Appeal Docket No.: 2015-10016-APCC
Lower Case Nos.: 2014-20479-CONS
c: Kimberly Simoes, Esquire, Betsy Gallagher, Esquire, Michael Clarke, Esquire and Honorable Angela A. Dempsey

CL-0147-9804

IN THE CIRCUIT COURT, SEVENTH
JUDICIAL CIRCUIT, IN AND FOR
VOLUSIA COUNTY, FLORIDA

Appeal No.: 2015-10016-APCC
Lower Court No.: 2014-20479-CONS

CENTRAL FLORIDA MEDICAL AND
CHIROPRACTIC CENTER A/A/O RONALD
SEALEY,

Appellant,

vs.

PROGRESSIVE AMERICAN INSURANCE
COMPANY,

Appellee.
_____/

Opinion on appeal filed: _____

Appeal from County Court
for Volusia County, Florida
Christopher Kelly, County Judge

Kimberly Simoes, Esquire
Appellant

Betsy Ellwanger Gallagher, Esquire
Counsel for Appellee

PER CURIAM.

AFFIRMED.

SANDRA C. UPCHURCH
Circuit Judge

KAREN A. FOXMAN
Circuit Judge

FILED
2017 JUL 31 PM 3:25
CLERK OF THE CIRCUIT
& CTY. COURT VOLUSIA CTY., FL
CC 48

cc: Honorable Christopher Kelly, County Judge
Kimberly Simoes, Esquire (eService by Clerk)
Betsy Ellwanger Gallagher, Esquire (eService by Clerk)
Eric Biernacki, Esquire and Whitney E. Dort, Esquire (eService by Clerk)

FINANCIAL HISTORY

FINANCIAL HISTORY

1. State the amount of gross income you have earned, or losses you have incurred (before deducting expenses and taxes) from the practice of law for the preceding three-year period. This income figure should be stated on a year to year basis and include year to date information, and salary, if the nature of your employment is in a legal field.

Current Year-To-Date: $117,282.78 (Judicial Salary)

Last Three Years (Judicial Salary):

2020: $152, 960.73 2019: $151,821.96 2018: $151,821.96

2. State the amount of net income you have earned, or losses you have incurred (after deducting expenses but not taxes) from the practice of law for the preceding three-year period. This income figure should be stated on a year to year basis and include year to date information, and salary, if the nature of your employment is in a legal field.

Current Year-To-Date: $105,599.40 (Judicial Salary)

Last Three Years (Judicial Salary):

2020: $148,708.06 2019: $140,502.72 2018: $142,445.38

3. State the gross amount of income or loses incurred (before deducting expenses or taxes) you have earned in the preceding three years on a year by year basis from all sources other than the practice of law, and generally describe the source of such income or losses.

Current Year-To-Date: None

Last Three Years: None

4. State the amount you have earned in the preceding three years on a year by year basis from all sources other than the practice of law, and generally describe the source of such income or losses.

Current Year-To-Date: None

Last Three Years: None

5. State the amount of net income you have earned or losses incurred (after deducting expenses) from all sources other than the practice of law for the preceding three-year period on a year by year basis, and generally describe the sources of such income or losses.

Current Year-To-Date: None

Last Three Years: None

FORM 6

FORM 6
FULL AND PUBLIC
DISCLOSURE OF
FINANCIAL INTEREST

PART A – NET WORTH

Please enter the value of your net worth as of December 31 or a more current date. [Note: Net worth is not calculated by subtracting your *reported* liabilities from your *reported* assets, so please see the instructions on page 3.]

My net worth as of September 30, 2021 was
$233,176.06

PART B - ASSETS

HOUSEHOLD GOODS AND PERSONAL EFFECTS:

Household goods and personal effects may be reported in a lump sum if their aggregate value exceeds $1,000. This category includes any of the following, if not held for investment purposes; jewelry; collections of stamps, guns, and numismatic items; art objects; household equipment and furnishings; clothing; other household items; and vehicles for personal use.

The aggregate value of my household goods and personal effects (described above) is $28,100.00

ASSETS INDIVIDUALLY VALUED AT OVER $1,000:

DESCRIPTION OF ASSET (specific description is required – see instructions p. 3)	VALUE OF ASSET
Checking & Savings (SunTrust)	$9,475.96
ısion Contribution (State of Florida)	$41.239.45
Nationwide Retirement Account (see attached supplement for value of each investment)	$74,718.78
Wells Fargo Investment Account (see attached supplement for value of each investment)	$25,823.87
Deposit on Home Purchase/Construction Contract (Platinum Builders)	$79,000.00

PART C - LIABILITIES

LIABILITIES IN EXCESS OF $1,000 (See instructions on page 4): NAME AND ADDRESS OF CREDITOR	AMOUNT OF LIABILITY
GM Financial 801 Cherry St., Suite 3500, Ft. Worth, TX 76102	$2,182.00

JOINT AND SEVERAL LIABILITIES NOT REPORTED ABOVE: NAME AND ADDRESS OF CREDITOR	AMOUNT OF LIABILITY
None	

PART D - INCOME

You may ***EITHER*** (1) file a complete copy of your latest federal income tax return, *including all W2's, schedules, and attachments,* ***OR*** (2) file a sworn statement identifying each separate source and amount of income which exceeds $1,000 including secondary sources of income, by completing the remainder of Part D, below.

☐ I elect to file a copy of my latest federal income tax return and all W2's, schedules, and attachments.
(if you check this box and attach a copy of your latest tax return, you need *not* complete the remainder of Part D.]

PRIMARY SOURCE OF INCOME (See instructions on page 5):

NAME OF SOURCE OF INCOME EXCEEDING $1,000	ADDRESS OF SOURCE OF INCOME	AMOUNT
State of Florida	Judicial Salary	$156,377.04

SECONDARY SOURCES OF INCOME [Major customers, clients, etc., of businesses owned by reporting person—see instructions on page 6]

NAME OF BUSINESS ENTITY	NAME OF MAJOR SOURCES OF BUSINESS' INCOME	ADDRESS OF SOURCE	PRINCIPAL BUSINESS ACTIVITY OF SOURCE
none			

PART E – INTERESTS IN SPECIFIC BUSINESS [Instructions on page 7]

	BUSINESS ENTITY #1	BUSINESS ENTITY #2	BUSINESS ENTITY #3
NAME OF BUSINESS ENTTITY	none		
ADDRESS OF BUSINESS ENTITY			
PRINCIPAL BUSINESS ACTIVITY			
POSITION HELD WITH ENTITY			
I OWN MORE THAN A 5% INTEREST IN THE BUSINESS			
NATURE OF MY OWNERSHIP INTEREST			

IF ANY OF PARTS A THROUGH E ARE CONTINUED ON A SEPARATE SHEET, PLEASE CHECK HERE ☑

OATH

I, the person whose name appears at the beginning of this form, do depose on oath or affirmation and say that the information disclosed on this form and any attachments hereto is true, accurate, and complete.

SIGNATURE

STATE OF FLORIDA

COUNTY OF Volusia

Sworn to (or affirmed) and subscribed before me this 13 day of October, 20 21 by _____

Cindy Sutton

(Signature of Notary Public—State of Florida)

(Print, Type, or Stamp Commissioned Name of Notary Public)

CINDY SUTTON
Commission # HH 121109
Expires May 17, 2025
Bonded Thru Troy Fain Insurance 800-385-7019

Personally Known X *OR* Produced Identification _____

Type of Identification Produced _____

Supplemental Page to Form 6 for Christopher Kelly

Part B – Assets (Breakdown of Stock/Mutual Fund Holdings)

Description of Asset	**Value of Asset**
Nationwide Retirement:	
JP Morgan Small Cap Equity I	1,676.37
T Rowe Price Overseas Stock	1,634.37
T Rowe Price Health Sciences Fund	12,604.39
T Rowe Price Media & Telecommunications	12,789.56
T Rowe Price New Horizons Fund	15,196.61
T Rowe Price Science & Technology Fund	17,760.31
T Rowe Price Small-Cap Stock Fund	3,794.00
T Rowe Price Dividend Growth Fund	3,655.18
JP Morgan Mid Cap Value	1,753.08
Fidelity Puritan	1,614.87
Held at Wells Fargo Retirement	
Stock – Carnival Corp	2,501.00
Mutual Fund – Davis NY Venture Fund C	19,690.31
Mutual Fund – Growth America Fund	2,431.88
Cash	200.68

JUDICIAL APPLICATION DATA RECORD

JUDICIAL APPLICATION DATA RECORD

The judicial application shall include a separate page asking applicants to identify their race, ethnicity and gender. Completion of this page shall be optional, and the page shall include an explanation that the information is requested for data collection purposes in order to assess and promote diversity in the judiciary. The chair of the Commission shall forward all such completed pages, along with the names of the nominees to the JNC Coordinator in the Governor's Office (pursuant to JNC Uniform Rule of Procedure).

(Please Type or Print)

Date: October 13, 2021

JNC Submitting To: Seventh Judicial Circuit

Name (please print): Christopher Kelly

Current Occupation: Volusia County Court Judge

Telephone Number: 386-822-5016

Attorney No.: 0061697

Gender (check one): ☒ Male ☐

Ethnic Origin (check one): ☒ White, non-Hispanic

County of Residence: Volusia

FDLE

RELEASE

FLORIDA DEPARTMENT OF LAW ENFORCEMENT

DISCLOSURE PURSUANT TO THE
FAIR CREDIT REPORTING ACT (FCRA)

The Florida Department of Law Enforcement (FDLE) may obtain one or more consumer reports, including but not limited to credit reports, about you, for employment purposes as defined by the Fair Credit Reporting Act, including for determinations related to initial employment, reassignment, promotion, or other employment-related actions.

CONSUMER'S AUTHORIZATION FOR
FDLE TO OBTAIN CONSUMER REPORT(S)

I have read and understand the above Disclosure. I authorize the Florida Department of Law Enforcement (FDLE) to obtain one or more consumer reports on me, for employment purposes, as described in the above Disclosure.

Christopher Kelly
Printed Name of Applicant

Signature of Applicant

Date: October 13, 2021