

In the Florida Supreme Court

**MRI ASSOCIATES OF TAMPA,
INC., d.b.a. Park Place MRI,**

Petitioner,

vs.

Fla. S. Ct. Case No. SC18-1390

**STATE FARM MUTUAL
AUTO. INS. CO.,**

Fla. 2d DCA Case No. 2D16-4036

Respondent.

PETITIONER'S MOTION TO DISPENSE WITH ORAL ARGUMENTS

Pursuant to Florida Rule of Appellate Procedure 9.300, the Petitioner, MRI Associates of Tampa, Inc., doing business as Park Place MRI, moves to dispense with oral arguments, and states:

1. This case is before this Court on a certified question of great public importance.
2. The factual and legal issues in this case are complex, and the record is voluminous.
3. The case is fully briefed and scheduled for oral argument on May 6, 2020.
4. As a result of the Coronavirus Disease 2019 (“COVID-19”) pandemic, the State Surgeon General and State Health Officer on March 1, 2020, declared that a public health emergency exists in Florida, and the Governor on March 9, 2020, declared a state of emergency for the entire state. The Florida state courts have taken

measures to mitigate the effects of this public health emergency upon the judicial branch and its participants. *See, In re: Comprehensive COVID-19 Emergency Measures for the Florida State Courts*, Administrative Order No. AOSC20-23 (Fla. April 6, 2020) at p. 1.¹

5. As a result of the COVID-19 pandemic, this Court has postponed until June 2020 all oral arguments that were previously scheduled for April 2020. Although this Court has not yet made any public announcements concerning oral arguments that are currently scheduled for May 2020, it is expected that the effects of the virus will peak in Florida sometime between April 21, 2020 and May 3, 2020. *See, e.g.*, S. Powers, “Key COVID-19 model now forecasting earlier peak in Florida,” *FLAPOL* (Apr. 6, 2020);² J. Waymer, “Coronavirus in Florida: Sunshine State may have extra time to prepare before 'spike' hits,” *Florida Today* (Apr. 3, 2020);³ A. Srikanth, “Here's when the coronavirus will peak in your state,” *The Hill* (updated Apr. 2, 2020).⁴ Latest projections forecast that Florida “could be seeing **242 people dying per day** of COVID-19” by April 21st, and when it is all over by

¹ <https://www.law360.com/articles/1260825/attachments/0>

² <https://floridapolitics.com/archives/326936-key-covid-19-model-now-forecasting-earlier-peak-in-florida>

³ <https://www.floridatoday.com/story/news/2020/04/03/coronavirus-florida-peak-expected-early-may-hospitals-should-prepare-now/5086424002/>

⁴ <https://thehill.com/changing-america/well-being/prevention-cures/490856-when-will-coronaviruses-cases-peak-in-your-state>

late summer, Florida's total COVID-19 *death toll* "*could reach 6,770.*" *See*, Powers (emph. added). *See also*, K. Rice, "May 3 predicted as Florida's worst day for COVID-19," *Orlando Sentinel* (Apr. 1, 2020) ("Florida could see *between 2,281 and 15,333 deaths*, or a median of 6,937 total deaths, from COVID-19 through August 4.") (emph. added).⁵

6. As a result of the pandemic, the President of the United States, the Governor of the State of Florida, the Centers for Disease Control and Prevention ("CDC"), and numerous local governments and federal and state agencies, as well as this Court, have issued various emergency orders and guidelines which require or strongly encourage significant restrictions on travel, assembly, personal hygiene, and personal space. Among other things, those emergency orders and guidelines prohibit or discourage gatherings of more than 10 people, and require or encourage everyone to stay at home and maintain a safe "social distance" of at least 6 feet between each other. *See, e.g.*, Centers for Disease Control and Prevention, "Coronavirus Disease 2019 (COVID-19) Social Distancing, Quarantine, and Isolation" (last viewed April 4, 2020);⁶ "The President's Coronavirus Guidelines for

⁵ <https://www.orlandosentinel.com/coronavirus/os-ne-coronavirus-murray-model-covid-19-predictions-florida-20200401-4c33a4hm2jgavov6c6k4p6qere-story.html>

⁶ <https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/social-distancing.html>

America.”⁷ Among other things, the CDC is also recommending everyone to frequently wash their hands and to wear cloth face masks in public settings to prevent spreading the virus. *See*, Centers for Disease Control and Prevention, “When and How to Wash Your Hands” (last viewed on Apr. 6, 2020);⁸ Centers for Disease Control and Prevention, “Recommendation Regarding the Use of Cloth Face Coverings, [etc.],” (last viewed on Apr. 6, 2020).⁹

7. In response to the pandemic, the U.S. Supreme Court, this Court and numerous other appellate courts across the nation have cancelled oral arguments for various different time periods. Here in Florida, this Court’s Chief Justice, Charles T. Canady, recently ruled in Administrative Order No. AOSC20-23 that “[n]o proceedings or other court events other than essential proceedings and proceedings critical to the state of emergency or the public health emergency shall be conducted through in-person hearings.” *Id.* at Section III.D. Presumably, that prohibition covers oral argument hearings in appeals such as this one. And, the requirements of that Administrative Order are to remain in effect through the close of business on May 29, 2020. *Id.* at p. 2.

8. As stated in one of Governor Ron DeSantis’s recent emergency orders,

⁷ https://www.whitehouse.gov/wp-content/uploads/2020/03/03.16.20_coronavirus-guidance_8.5x11_315PM.pdf

⁸ <https://www.cdc.gov/handwashing/when-how-handwashing.html>

⁹ <https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/cloth-face-cover.html>

“it is necessary and appropriate to take action to ensure that the spread of COVID-19 is slowed, and that residents and visitors in Florida remain safe and secure.” *See*, State of Florida, Office of the Governor, “Executive Order No. 20-91 (Essential Services and Activities During COVID-19 Emergency),” (April 3, 2020).¹⁰

9. Each of the parties in this case is represented by multiple attorneys, and all of them are located outside of Leon County, with some in Hillsborough County, some in Dade County, one in Pinellas County, and one in Orange County. Accordingly, conducting the oral argument at an “in-person” hearing in Tallahassee would require the parties’ attorneys to travel to and seek temporary lodging in Tallahassee, which will be difficult because the pandemic is causing many hotels to temporarily close. In addition, everyone in the courthouse (including the Justices and all other court personnel) will have to maintain a distance of at least 6 feet away from each other. This 6-foot distance will effectively prevent or impair co-counsel from conferring with each other during the oral argument. While telephonic or video conferencing technology exists, it does not eliminate the 6-foot distance requirement or alleviate the inability of co-counsel to confer with each other during the oral argument. In a voluminous and complex case of great public importance, the ability of co-counsel to confer should be encouraged and fortified--not impaired.

10. Moreover, an oral argument in a voluminous, complex, and important

¹⁰ https://www.flgov.com/wp-content/uploads/orders/2020/EO_20-91-compressed.pdf

case like this one requires the parties' respective attorneys to engage in substantial and costly preparations and practice sessions, which involve attorney meetings in group settings as well as in-office work for their paralegals and secretaries. Thus, regardless of whether the oral argument is presented in-person or by video-conference, preparation for the oral argument in this case will create an unnecessary risk of spreading the virus.

11. Although the issues in this case are complex and important, they are well-briefed by seasoned attorneys. Consequently, it is doubtful that an oral presentation would truly provide greater clarity of the parties' positions than the written arguments already presented in their respective appellate briefs.

12. To the extent that this Court has any questions for the parties that would otherwise be posed during oral arguments, it is respectfully submitted that such questions can be presented by this Court to the parties by written order, and answered in writing by the parties through supplemental briefing, with appropriate deadlines and page limitations set by the Court, in its discretion.

13. Such written answers would, in all likelihood, be more responsive, accurate, and complete than a spontaneous oral answer would be at an oral argument hearing. Because this case involves a question of great public importance, this Court, the parties, and the public will be much better served by such written answers. Moreover, when compared to conducting an oral argument in-person or by video-conference, a written question-and-answer process would require fewer court

and law firm personnel to accomplish, would be less expensive to this Court and the parties, and would better serve the public, health, safety and welfare by greatly reducing the risk of spreading the virus.

14. Accordingly, it is respectfully submitted that the best interests of the public, as well as this Court, the parties, the attorneys and their respective personnel would be served by dispensing with oral arguments and by addressing questions (if any) from the Court through supplemental briefing.

15. The undersigned attorney has communicated with the Respondent's attorney (i.e., Chris W. Altenbernd, Esquire), and is authorized to state the Respondent opposes this motion and will file a response.

WHEREFORE, the Petitioner respectfully requests this Honorable Court to:
(a) dispense with oral arguments, (b) present any questions from the Court to the parties in writing, and (c) direct the parties to respond by supplemental briefing.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy hereof was **Electronically Filed** with the Clerk of the Court, and **Electronically Served** on the following persons on this 7th day of APRIL, 2020:

Counsel for State Farm Mutual Automobile Insurance Company:

- Chris W. Altenbernd, Esq. (Email: caltenbernd@bankerlopez.com; service-caltenbernd@bankerlopez.com; amercado @bankerlopez.com), Banker Lopez Gassler, P.A., 501 E. Kennedy Blvd., Suite 1700, Tampa, FL 33602;
- D. Matthew Allen, Esq. (Email: mallen@cfjblaw.com; ejones@cfjblaw.com), Carlton Fields, P.A., 4221 West Boy Scout Blvd., Suite 1000, Tampa, FL 33607;

- Marcy Levine Aldrich, Esq. (Email: marcy.aldrich@akerman.com; debra.atkinson@akerman.com), and Nancy A. Copperthwaite, Esq. (nancy.copperthwaite@akerman.com), Akerman LLP, 98 Southeast Seventh Street, Suite 1100, Miami, FL 33131;
- Kenneth P. Hazouri, Esq. (Email: kph47@dbksmn.com; Secondary Email: lquezada@dbksmn.com), de Beaubien Knight, Simmons, Mantzaris & Neal, LLP, 332 N. Magnolia Ave., Orlando, FL 32801;

Counsel for Amicus Curiae Florida Medical Association:

- Edward H. Zebersky, Esq. (Email: ezebersky@zpllp.com), Zebersky Payne, LLP, 110 S.E. 6th St., Suite 2150, Ft. Lauderdale, FL 33301;
- Lawrence M. Kopelman, Esq. (Email: lmk@kopelblank.com), Lawrence M. Kopelman, P.A., One West Las Olas Blvd., Suite 500, Ft. Lauderdale, FL 33301;

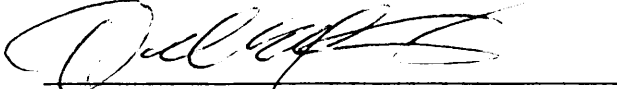
Counsel for Amicus Curiae Floridians for Fair Insurance, Inc.:

- Mac S. Phillips, Esq. (Email: mphilips@phillipstadros.com), Phillips Tadros, P.A., 212 SE 8th St., Suite 103, Fort Lauderdale, FL 33316;
- Kenneth J. Dorchak, Esq. (Email: kdorchak@bhdllawfirm.com), Buchalter, Hoffman & Dorchak, 1075 NE 125th St., Suite 202, North Miami, FL 33161;
- Stuart L. Koenigsberg, Esq., (Email: stuart@koenigsberglaw.com), Stuart L. Koenigsberg, P.A., 8877 SW 131st St., Miami, FL 33176;
- Melisa L. Coyle, Esq., (Email: mcoyle@thecoylelawfirm.com), The Coyle Law Firm, P.A., 407 Lincoln Road, Suite 8E Miami Beach, FL 33139; and

Counsel for Amici Curiae American Property Casualty Insurance Association, and Personal Insurance Federation of Florida:

- Maria Elena Abate, Esq. (Email: mabate@colodnyfass.com) and L. Michael Billmeier, Jr., Esq. (Email: mbillmeier@colodnyfass.com), Colodny Fass, 1401 Northwest 136th Ave., Suite 200 Sunrise, FL 33323.

Respectfully submitted,



David M. Caldevilla, FBN 654248
Primary: dcaldevilla@dgfirm.com
Secondary: serviceclerk@dgfirm.com
de la Parte & Gilbert, P.A.
Post Office Box 2350
Tampa, FL 33601-2350
Telephone: (813)229-2775

Kristin A. Norse, FBN 965634
Primary: knorse@kmf-law.com
Secondary: plawhead@kmf-law.com
Stuart C. Markman, FBN 322571
Primary: smarkman@kmf-law.com
Kynes, Markman & Felman, P.A.
Post Office Box 3396
Tampa, FL 33601
Telephone: (813)229-1118

Craig E. Rothburd, FBN 0049182
Primary: crothburd@e-rlaw.com
Craig E. Rothburd, P.A.
320 W. Kennedy Blvd., Suite 700
Tampa, FL 33606
Telephone: (813)251-8800

Scott R. Jeeves, FBN 0905630
Primary: sjeeves@jeeveslawgroup.com
Secondary: amyers@jeeveslawgroup.com
The Jeeves Law Group, P.A.
954 First Ave. North
St. Petersburg, FL 33705
Telephone: (727)894-2929

John V. Orrick, Jr., FBN 28225
Primary: jorrick@jvolaw.com
Law Offices of John V. Orrick, P.L.
6946 W. Linebaugh Ave.
Tampa, FL 33625-5800
Telephone: (813)283-5868

COUNSEL FOR PETITIONER