IN THE SUPREME COURT OF FLORIDA

CASE NO: SC19-1118

BRENT A. DODGEN,

Petitioner,

v.

KAITLYN P. GRIJALVA,

Respondent.

RESPONDENT'S ANSWER BRIEF

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I. INTRODUCTION

Contrary to Allstate's[1] introductory assertion, this is not a case that seeks to determine "the effect and application of this Court's decision in *Worley v. Central Florida YMCA*, 228 So. 3d 18 (Fla. 2017), on discovery served by a plaintiff upon defendant seeking information concerning the financial relationship between the defendant's insurance company and the compulsory medical examiner." (IB at 1) The question of the applicability of *Worley* to the instant discovery has already been answered. It has no applicability. Both the majority and the dissent in *Worley* agreed that *Allstate Insurance Co. v. Boecher*, 733 So. 2d 993 (Fla. 1999) remains good law and compels the production of the discovery sought here. The majority and the dissent only disagreed as to whether *Boecher also* applied to compel discovery of the referral relationship between a plaintiff's law firm and treating physicians.

Instead, this appeal is Allstate's attempt to "render *Boecher* meaningless in all but a small class of cases." *Springer v. West*, 769 So. 2d 1068, 1069 (Fla. 5th DCA 2000). As this Court stated back in 1999, "Although Allstate may not want the plaintiff to discover information regarding the extent of the relationship between Biodynamics and Allstate, as Judge Farmer so aptly observed, that information

[1] Although Brent Dodgen is the named Petitioner, Allstate Insurance Company is the real party in interest here and the driving force behind this Petition. Our brief will dispense with the legal fiction created by the non-joinder statute and address our arguments to the actual proponent of Petitioner's arguments.

would be 'indisputably relevant and meaningful.'" *Boecher* at 998.

In *Worley,* all seven Justices of this Court affirmed the ongoing viability of this holding. Thus, to the extent that *Worley* creates an "uneven playing field," as Allstate argues, the problem is *Worley*, not *Boecher.* This case, however, is not the proper vehicle to "fix" *Worley*, so this Court should decline to review the Petition.

II. STATEMENT OF THE CASE AND FACTS

Under Article V, § 3(b)(4) of the Florida Constitution, this Court has jurisdiction to review *the decision* of the District Court of Appeal, not the certified question. Thus, this Court's review is limited to the question of whether the trial court departed from the essential requirements of law in ordering Allstate to answer *Boecher* discovery.

Allstate attempts to expand the scope of the issue under review in a manner that is both factually inaccurate and legally impermissible. First, Allstate complains that the trial court compelled "discovery of extensive communications between Dodgen, the insurance company, the defense law firm, and the compulsory medical examiners." (IB at 26) This is simply not true. Plaintiff sought no communications of any kind. Allstate set forth in its initial brief the actual discovery requests at issue here. We will review them in detail below, but on their face, they do not seek communications of any kind.

Next, Allstate continues to reference the Plaintiff's request for discovery from the Allstate's retained law firm even though Plaintiff withdrew that request below. (R.441) Allstate discusses, at length, its efforts to obtain discovery from the Plaintiff's law firm regarding payments made to the Plaintiff's treating physicians. (IB at 4-5) Allstate further references discovery sent by the Plaintiff *after* the date of the order on appeal, despite these references being properly struck by the Fourth District below. (IB at 6 FN1) None of these ancillary discovery matters are at issue in this appeal.

Instead, after withdrawal of the discovery directed to Allstate's retained law firm, the only discovery requests still at issue in this appeal are the following interrogatory questions:

> 5. Please identify each and every case in which each said expert has testified as an expert witness by deposition during the preceding three (3) years for those representing the defense in this case, including the name of the case and case number, the names and address of the attorneys, the current location of the copies of the deposition transcripts, and the name, address and telephone number of the court reporter who attended each deposition.
>
> 6. Please identify each and every case in which each said expert has testified as an expert witness in trial during the preceding three (3) years for those representing the defense in this case, including the name of the case and the case number and the names and addresses of the attorneys, also include whether the expert testified for the defense or the plaintiff.
>
> . . .

9. Please state the amount of money paid to each said expert by those representing the defense in this case for his/her expert services during the preceding three (3) years as follows:

Year	Total Amount Paid
2018	
2017	
2016	

(R.86-87)

Interrogatory numbers 5 and 6 are specifically authorized under Fla.R.Civ.P. 1.280(5)(A)(iii)(3). This Court, in *Elkins v. Syken*, 672 So. 2d 517 (Fla. 1996), authorized limited discovery that could be obtained directly from expert witnesses.[2] Indeed, the instant requests are actually narrower than the requests authorized under Rule 1.280, as they only request information regarding cases in which the expert has testified for Allstate Insurance Company. Rule 1.280 authorizes parties to discover this information for *all* cases that the expert has testified in over the last three years. Surely, Allstate is not arguing that *Worley* has implicitly abrogated *Elkins* and Fla.R.Civ.P. 1.280(5)(A)(iii)(3)?

This leaves a single interrogatory at issue in this appeal - interrogatory 9 - which was specifically authorized by *Boecher*. *Boecher* at 994 ("The questions also sought to learn the amount of fees Allstate had paid Biodynamics nationally and

[2] "The expert may be required to identify specifically each case in which he or she has actually testified, whether by deposition or at trial, going back a reasonable period of time, which is normally three years." *Elkins* at 521.

during the preceding three years.") Thus, the only issue before this Court is whether the trial court departed from the essential requirements of law in compelling Allstate to provide the information sought in interrogatory number 9. The answer to this question is an unequivocal "No."

III. SUMMARY OF ARGUMENT

This Court should dismiss Allstate's Petition because it lacks jurisdiction to hear it. Allstate failed to timely file its notice to invoke discretionary jurisdiction if this court within 30 days after the decision of the Fourth DCA was rendered. Even if the subsequent filing of the Fourth DCA's opinion extended the time to file the notice, this Court still lacks jurisdiction because the opinion did not pass upon the certified question.

Should this Court decide to hear the Petition on its merits, it must review the decision below in order to determine if the trial court departed from the essential requirements of the law. It cannot simply answer the certified question. Because there was no dispute in the law as to the discoverability of the financial bias information sought by the Plaintiff below, the trial court could not have departed from the essential requirements of the law.

Allstate offers a number of assertions regarding the manner in which financial bias discovery has negatively impacted personal injury litigation. None of these assertions were supported by record evidence. And many of these arguments have

been previously rejected by appellate courts throughout the state.

Worley had no impact on cases, like *Springer*, that authorized discovery of the financial relationship between a party's representatives and their retained trial experts. *Worley* was solely applicable to hybrid witnesses, a class of witnesses that weren't even formally defined until a decade after *Springer and* had no defense equivalent. Both plaintiffs and defendants remain entitled to discovery into the other side's financial relationship with their retained experts.

The discovery at issue on appeal did not seek any information protected by the attorney client privilege. It was further authorized under Rule 1.280.

Allstate asks this court to ignore the principle of *stare decisis*. However, before this Court can do so, it must first disagree with the precedent that the Petitioner seeks to overturn. All of the current Justices remaining from the *Worley* Court reaffirmed the rationale and holding of *Boecher*. There was disagreement only on the applicability of *Boecher* to the discovery sought in *Worley*.

This disagreement would give the Court the ability to recede from *Worley*, but only if the case or controversy dealt with the discovery at issue in Worley. This case does not, and therefore cannot be used as a vehicle to "fix" *Worley*. If this Court is desirous of achieving that goal, it should use its rule making authority under Rule 2.140.

IV. ARGUMENT

A. THIS COURT LACKS JURISDICTION TO REVIEW THE DISTRICT COURT'S DECISION.

Before reviewing the Fourth District's decision, this Court must first determine whether it has jurisdiction to do so. Unfortunately for Allstate, this Court lacks jurisdiction, for two reasons. First, Allstate's July 2, 2019 Notice to Invoke Discretionary Jurisdiction of this Court was untimely. Second, the District Court did not "pass upon" the question certified by it to be of great public importance.

1. THE NOTICE TO INVOKE DISCRETIONARY JURISDICTION WAS UNTIMELY.

Like almost all appellate deadlines, the 30-day time for filing a notice to invoke discretionary jurisdiction of the Supreme Court is jurisdictional. Fla.R.App.P. 9.120(b), Commencement, states, "the jurisdiction of the supreme court described in rule 9.030(a)(2)(A) shall be invoked by filing a notice, accompanied by any filing fees prescribed by law, with the clerk of the district court of appeal *within 30 days of rendition of the order to be reviewed.*"

Fla.R.App.P. 9.020(f) defines "Order" as follows:

> A decision, order, judgment, decree, or rule of a lower tribunal, excluding minutes and minute book entries.

Fla.R.App.P. 9.020(h) defines "Rendition (of an Order)" as:

> An order is rendered when a signed, written order is filed with the clerk of the lower tribunal.

On May 21, 2019, the Fourth District issued its decision in this case, which read: "Ordered that Brent Dodgen's April 9, 2019 Petition for Writ of Certiorari is Denied."[3] This "Order" was "Rendered" on May 29, 2019, when it appeared on the Fourth District's docket. Therefore, Allstate had until June 28, 2019 to file its Notice Invoking the Discretionary Jurisdiction of this Court. But Allstate did not file its notice until July 2, 2019.

Allstate will no doubt complain that its ability to invoke the discretionary jurisdiction of this Court did not arise until the Fourth District actually issued its opinion. While this may be true, this does not solve Allstate's problem, for two reasons. First, Allstate still had three days within which to file its Notice after the Fourth District issued its opinion. Allstate missed this window.

Second, there is no language in the rule to account for the unusual circumstances of this case - the appellate court issues a decision and subsequently enters an opinion explaining that decision 28 days after the decision has been rendered. Both the Rule and the law are clear, "the issuance of the *decision* is the critical date for seeking discretionary review." *Sims v. State*, 998 So. 2d 494, 499 (Fla. 2008). (emphasis supplied)

This Court, and others, have explained the difference between a "decision"

[3] Unlike a dismissal of a Petition for Writ of Certiorari, a denial is a decision on the merits. *See Boecher* at 999.

and an "opinion." *See Floridians For A Level Playing Field v. Floridians Against Expanded Gambling*, 967 So. 2d 832, 833–34 (Fla. 2007) (Distinguishing "the judgment, which is essentially the ultimate decision in the case, [from] the opinion, which sets 'forth the theory and reasoning upon which a decision' is reached."); *Florida Highway Patrol v. Jackson*, SC18-468, 2020 WL 370366, at *6 (Fla. Jan. 23, 2020) ("In a separate opinion that will be issued together with our decision in this case."); and *In re Guardianship of Schiavo*, 932 So. 2d 264, 264 FN1 (Fla. 2d DCA 2005) (referring to a *per curiam* decision that stated "Affirmed. An opinion will follow" – "we did not believe the doctrine of mootness allows us to avoid explaining a decision when it is issued in such an expedited fashion.")

Rule 9.120(b) specifically states that the 30-days runs from the issuance of the **decision**, not the opinion. There is nothing in the rule, or the law, that extends or resets that deadline upon the filing of an opinion. In this case, the decision was rendered on May 29, 2019. Allstate did not file its notice until July 2, 2019. The notice was therefore untimely, and this Court should dismiss the Petition for lack of jurisdiction.

2. THE DISTRICT COURT DID NOT PASS UPON THE CERTIFIED QUESTION AND THIS COURT THEREFORE LACKS JURISDICTION.

This Court has jurisdiction to review a district court of appeal decision certified as passing upon a question of great public importance. Art. V. § 3(b)(4), Fla. Const.; Fla.R.App.P. 9.030(a)(2)(A)(v). This Court has held that, "[i]n order to

have discretionary jurisdiction based on a certified question, there are essentially three prerequisites that must be met." *Floridians for a Level Playing Field v. Floridians Against Expanded Gambling*, 967 So. 2d 832, 833 (Fla. 2007). The first "essential" prerequisite, and the one dispositive of this Court's lack of jurisdiction, is that "the district court of appeal pass upon the question certified by it to be of great public importance." *Id. See also Pirelli Armstrong Tire Corp. v. Jensen*, 777 So. 2d 973 (Fla. 2001); *Salgat v. State*, 652 So.2d 815 (Fla. 1995); and *Speedway Superamerica, LLC v. Dupont*, 955 So. 2d 533 (Fla. 2007).

The Fourth District's certified question asks this Court whether the rationale of *Worley* should be extended to preclude discovery of Allstate's financial relationship with its retained CME experts. It is clear that the Fourth District's opinion did not "pass upon" this question. It did not rule whether the rationale should or should not be extended to the facts of the instant case. It simply held that under the current state of the law, Allstate was not entitled to certiorari relief.

Salgat v. State, 630 So. 2d 1143, 1145 (Fla. 1st DCA 1993), presents the closets analogue we could find to the current certified question. In *Salgat*, the First District certified a question asking whether a recent decision of this Court could be reconciled with prior longstanding precedent. The First District certified the following question:

> WHETHER A JURY INSTRUCTION CONCERNING A DEFENDANT'S INCONSISTENT EXCULPATORY STATEMENTS

PREVIOUSLY HELD PROPER UNDER *JOHNSON V. STATE* CONSTITUTES AN IMPROPER COMMENT UPON THE EVIDENCE IN LIGHT OF THE COURT'S DECISION IN *FENELON V. STATE*.

Salgat at 1145.

This Court denied the petition for review, holding "this Court has no jurisdiction to answer a question certified by a district court when that court has not first passed upon the question certified." *Salgat v. State*, 652 So. 2d 815 (Fla. 1995).[4] In *Salgat* and here, the district court sought guidance from this Court as to whether this Court's newly issued opinion impacted a previously issued opinion. In neither case did the district court "pass upon" the certified question. This Court denied review in *Salgat*. It should similarly deny review here.

Two similar decisions provide us with additional guidance. In *Speedway Superamerica, LLC v. Dupont*, 955 So. 2d 533 (Fla. 2007), the Fifth District certified a question to this Court asking whether the rule announced in *Mercury Motors Express, Inc. v. Smith*, 393 So. 2d 545 (Fla. 1981) applied to a punitive damage award under a Florida statutory claim. This Court denied review. In her concurrence explaining the denial, Justice Pariente wrote that "the Fifth District never determined which standard of punitive damages applied" and therefor it did not pass upon the

[4] This Court did, however, address the problem identified by the First District using its rule making authority under Art. V. § 2. We will discuss this authority further below.

question. *Speedway* at 534. (Pariente, J., concurring). Here, the district court did not determine whether *Worley* should or should not be extended to apply to the discovery at issue.

In *Florida Dept. of Highway Safety & Motor Vehicles v. Robinson*, 112 So. 3d 83, 84 (Fla. 2013) (Pariente, J., concurring), the Second District certified a question asking whether it would be a violation of due process to suspend a Florida driver's license under a certain set of circumstances related to subpoena enforcement. This Court held that the Second District failed to pass upon the question because it "never reached the decision as to whether there would be a denial of due process under the circumstances presented." *Robinson* at 84. (Pariente, J., concurring). Again, here, the Fourth District never answered whether *Worley's* rationale should or should not preclude the discovery sought from Allstate.

Because the Fourth District did not pass upon the certified question, this Court should dismiss for lack of jurisdiction.

B. THIS COURT MUST REVIEW THE DISTRICT COURT'S DECISION UNDER THE SAME STANDARD OF REVIEW THE DISTRICT COURT APPLIED.

Allstate has not asked this Court to determine that the trial court departed from the essential requirements of the law. Instead, Allstate has asked only that this Court answer the certified question in the affirmative. This evidences a misunderstanding of the limited scope of this Court's certiorari jurisdiction. This Court reviews the case from the vantage point of the district court—which can only issue a writ of

certiorari if the three elements of certiorari review are satisfied. *See Citizens Prop. Ins. Corp. v. San Perdido Ass'n, Inc.*, 104 So. 3d 344, 351 (Fla. 2012). Allstate's brief wholly fails to address the first element: "the court must [] determine whether the decision below departed from the essential requirements of law—something that is more than just a legal error." *Id.*

San Perdido makes this point clear. There, this Court was faced with a question certified by the First District. The mere certification by the First District did not allow this Court to answer the certified question without regard to the certiorari standards that constitutionally limited the district court's power. To the contrary, while the majority, the concurrence, and the dissent disagreed whether the district court should have issued the writ of certiorari, all three opinions answered the certified question under the certiorari standards. *See id.* at 345-59. Indeed, Justice Canady reframed the question to clarify that he was answering the question under the certiorari standards. *Id.* at 358 (Canady, J. dissenting).

The requirement that this Court review the decision below—and not merely answer the certified question—is grounded in the constitution's plain text. This Court "[m]ay review any decision of a district court of appeal that passes upon a question certified by it to be of great public importance." Fla. Const. Art. V, § 3(b)(4) (emphasis added). Of course, this Court may answer the certified question while reviewing the district court's decision, but it may not merely answer the question

while failing to review the district court's decision.

If this Court were to answer the certified question in the affirmative, thus extending *Worley* to cover *Boecher* discovery directed to a third party's insurer, this would still not establish that the trial court departed from the essential requirements of law. As Justices Canady and Polston explained in their concurrence in *Rodriguez v. Miami-Dade County*, 117 So. 3d 400, 409 (Fla. 2013), a determination that the circuit court departed from the essential requirements of law "is warranted 'only when there has been a violation of a clearly established principle of law resulting in a miscarriage of justice.'" Conversely, when a principle of law remains ill defined, Justices Canady and Polston have held that a departure from the essential requirements of law *cannot* be found. *Id. at* 409 (Canady, J. concurring in result, joined by Polston, J.).

In *Rodriguez*, although he agreed with the outcome, Justice Canady disagreed with the lengthy analysis employed by the majority to reach its decision. Justice Canaday felt the outcome was dictated by a much simpler question: "whether the Third District could properly conclude that the circuit court departed from the essential requirements of law." *Id.* at 409 (Canady, J. concurring in the result). Then, Justice Canady correctly concluded:

> A determination that the circuit court departed from the essential requirements of law in failing to apply the emergency exception is unwarranted because the scope of the emergency exception remains ill-defined in the Florida case law….Given the state of the case law, the

> Third District had no basis for determining that the circuit court departed from the essential requirements of law. Such a determination is warranted "only when there has been a violation of a clearly established principle of law resulting in a miscarriage of justice." *Combs v. State*, 436 So.2d 93, 96 (Fla.1983). There is no "clearly established principle of law" that would require application of the emergency exception to a factual situation like the one presented by this case. *Id.* Accordingly, the decision of the Third District should be quashed.

Id. at 409 (Canady, J., concurring in the result).

It is inarguable that *Worley* did not clearly establish a principle of law prohibiting the discovery sought here. Even Allstate concedes that, at best, *Worley* only "implicitly overruled the defense-based cases which expanded the ruling of *Boecher* to non-parties."[5] (IB at 30) By necessity, this would render this principle of law "ill-defined," giving this court no basis to find the circuit court departed from the essential requirements of law.

We, of course, disagree with Allstate's argument that Worley has any impact on the *Boecher* discovery sought here. In *Worley*, none of the seven Justices even suggested that that their respective decisions had any impact on the holdings of *Boecher* and its progeny. Instead, the only dispute between the majority and the dissent was whether or not the discovery sought by the defendant in *Worley* was

[5] The Fifth District disagreed: "Contrary to Petitioner's argument, the Florida Supreme Court's decision in *Worley* did not implicitly overrule *Vazquez* or other similar cases." *Younkin v. Blackwelder*, 2019 WL 847548 (Fla. 5th DCA Feb. 22, 2019), *review granted*, SC19-385, 2019 WL 2180625 (Fla. May 21, 2019)

authorized by *Boecher*. Without a conflict in the law, the trial court was obligated to follow *Boecher* and its progeny, which necessarily means that its order did not depart from the essential requirements of the law. Allstate has given this Court no basis on which to conclude otherwise.

C. ALLSTATE'S "PARADE OF HORRIBLES" IS UNSUPPORTED BY ANY RECORD EVIDENCE.

After laying out the history of the jurisprudence on financial bias discovery, Allstate begins its argument by offering a number of questionable assertions, unsupported by any record evidence, regarding the alleged misuse of such discovery. Allstate first suggests that auto cases such as this one have begun "shifting their focus to collateral impeachment" and further, that financial bias discovery requests "are becoming more frequent and more extensive with each case." (IB at 16)

Of course, Allstate cites to no record evidence to support these assertions. Allstate certainly cannot point to this case as an example, however, because the three interrogatories that Allstate complains of are specifically authorized by Fla.R.Civ.P. 1.280(b)(5) and *Boecher*. None of them exceed the scope authorized by the rule and the law. Indeed, the 1.280(b)(5) questions actually request less information than authorized by the rule.

Further, financial bias impeachment discovery is already sufficiently constrained and has been for over 20 years. The parties are limited by *Elkins v. Syken*, 672 So. 2d 517 (Fla. 1996) and Rule 1.280(b)(5) as to the discovery that can

be obtained directly from expert witnesses. The parties are constrained by *Boecher* and its progeny as to the financial bias information that can be obtained from the defendant's insurer. If trial courts are allowing parties to obtain discovery outside these parameters, the problem lies with the trial courts, not with the law.

Allstate's proposed solution – narrowing the parameters of financial relationship discovery – does nothing to solve the alleged problem Allstate complains of – trial courts that allow for discovery that exceeds the current parameters. This incongruity demonstrates that Allstate's argument here is mere pretext to achieve a goal that it has long sought -- the elimination of *Boecher* discovery in third party cases.

Allstate's next unsupported assertion is that asking Defendants like Dodgen to obtain this information from their insurance companies is "increasing the cost of litigation." (IB at 9) Not only are these assertions unsupported, they are quite obviously false. Brent Dodgen didn't "obtain this information from his insurance company" and "in turn produce the information in the form requested by the Plaintiff." (IB at 17) Dodgen's attorneys, who are retained and paid by Allstate, obtain this discovery and produce it. *See Springer v. West,* 769 So. 2d 1068, 1069-1070 (Fla. 5th DCA 2000) (Harris, J., concurring) ("It is counsel, and not the parties, who prepare the answers to such interrogatories and the information sought is not that difficult for them to obtain." *Springer* at 1069-1070, (Harris, J., concurring).

In support of its assertion that financial bias discovery increases the cost of litigation, Allstate cites to a pre-*Elkins* case, *Young v. Santos*, 611 So. 2d 586 (Fla. 4th DCA 1993). The complaints of Judge Warner, as quoted by Allstate, have long since been dealt with by this Court in *Elkins*. This Court noted:

> Decisions in this field have gone too far in permitting burdensome inquiry into the financial affairs of physicians, providing information which "serves only to emphasize in unnecessary detail that which would be apparent to the jury on the simplest cross-examination: that certain doctors are consistently chosen by a particular side in personal injury cases to testify on its respective behalf." *LeJeune* [*v. Aikin*], 624 So.2d [788, 790 (Fla. 3d DCA 1993)] (Schwartz, C.J., specially concurring); *see Young v. Santos*, 611 So.2d 586, 587–88 (Fla. 4th DCA 1993) (Warner, J., concurring).

Elkins at 521. This Court addressed the complaints of Judge Warner and Judge Schwartz by limiting the scope of discovery that could be obtained directly from experts, **in 1996**. *Elkins* also disapproved *Young v. Santos*, *supra*, "to the extent it was inconsistent with this opinion." *Elkins* at 522. Accordingly, Allstate's entire support for its assertion that financial bias discovery is currently increasing the cost of litigation is a disapproved 1993 case whose concerns were addressed by this Court in 1996.[6]

[6] Earlier in its brief, Allstate cited to Chief Judge Mays concurrence in *Coopersmith v. Perrine*, 91 So. 3d 246 (Fla. 4th DCA 2012) (May, C.J. specially concurring), where she laments defendants' "attempts to expand the scope of [financial bias] discovery to treating physicians as well as retained experts." *Coopersmith* at 248. Off course, this is an argument supporting the restriction imposed by *Worley*, not an argument for the narrowing of permissible *Boecher* discovery.

Finally, Allstate's complaints of cost and burdensomeness associated with producing *Boecher* discovery have been long since rejected.[7] In 2002, in a case where Allstate actually offered record evidence in support of its claims, the Second District rejected Allstate's complaints as follows:

> However, in the three years following the issuance of *Boecher,* Allstate still has not implemented a computer program or system for keeping track of the information. In fact, Allstate used two of the very same affidavits it issued in *Boecher* to explain that is computer system did not have the information required readily accessible. In this day of the computer age, and in light of the *Boecher* court's serious emphasis on the need for the very type of information requested, Allstate may want to reconsider adapting its computer system to provide easier access to the requested information.

Allstate Insurance Co. v. Hodges, 855 So. 2d 636 (Fla. 2nd DCA 2003). In *Hodges*, Allstate's sworn testimony regarding the cost of responding to *Boecher* discovery fell on deaf ears. Eighteen years later, Allstate only offers unsupported assertions, likely because Allstate long ago made it easy to produce this information, as directed by the *Hodges* court.

Allstate's next unsupported assertion is that financial bias discovery "artificially inflates verdicts and inflames the emotions of jurors." (IB at 17) If

[7] The Fourth District has specifically held that such complaints of "unwarranted effort and expense" are not, by themselves, subject to certiorari review. *Topp Telecom, Inc. v. Atkins*, 763 So. 2d 1197, 1200 (Fla. 4th DCA 2000). In 2017, the Third District held that *Worley* neither "explicitly nor implicitly, overruled … *Topp Telecom.*" *Walgreen Co. v. Rubin*, 229 So. 3d 418, 422 (Fla. 3d DCA 2017).

Allstate wishes this Court to consider arguments such as these in rendering its decision, it should consider actually filing supporting evidence in the record before the trial court in its future attempts to undo *Boecher*. Without supporting evidence, these assertions are of no value.

Allstate next feigns confusion as to why the Plaintiff would pursue financial bias discovery when Allstate had "advised the Respondent, the trial court and the Fourth District" that Defendant Dodgen had "no prior relationship with the [CMEs] retained for his defense." (IB at 17) This disingenuous argument is a prelude to Allstate's renewed attack on *Springer v. West*, *supra*, which we will address in detail in the next section.

Allstate's final unsupported assertion is that "extensive financial discovery unduly chills the use of CMEs in the defense of cases." (IB at 18-19) Not only is this statement again unsupported by record evidence, we have a legitimate basis to believe that insurers are having no trouble finding doctors to serve as CMEs. In *State Farm Mutual Auto Insurance Co. v. Knapp*, 234 So. 3d 843, 849 (Fla. 5th DCA 2018), the Fifth District noted that discovery responses confirmed that "in the years 2013–2015, State Farm retained Dr. Zeide approximately 600 times and paid him …

1,235,067.75."[8] It seems unlikely that Allstate and its competitors are having difficulty finding doctors unwilling to be paid $400,000 per year to conduct 200 CMEs.

Further, in his *Worley* dissent, Justice Polston rejected a similar argument:

> The majority expresses its concern that the ordered discovery will have a chilling effect on doctors willing to testify. Majority op. at 26. However, this concern is without any supporting evidence. To the contrary, as indicated in the majority's opinion, the physicians group testified in this case that its whole practice is dependent on attorney letters of protection.

Worley at 31. (Polston, J., dissenting). Allstate similarly offers no supporting evidence. And *Knapp* suggests that physicians can make a very good living performing CMEs alone.

The "parade of horribles" that Allstate claims has arisen from *Boecher's* expansion of financial bias discovery is entirely unsupported by evidence and is devoid of any merit.

D. *WORLEY* HAS NO APPLICABILITY TO *SPRINGER V. WEST*.

Allstate begins its attack on *Springer* by arguing that *Worley* quashed the proposition that *Boecher* discovery from an insurer in a third party case "should be allowed because a defendant is entitled to similar discovery from the plaintiff's

[8] In *Herrera v. Moustafa*, 96 So. 3d 1020, 1021 (Fla. 4th DCA 2012), the record demonstrated that GEICO had paid Dr. Richard Simon almost $330,000 and Dr. Michael Raskin $243,260 over a three-year period for their service as CMEs.

side." (IB at 20) Not so. *Worley* did nothing to change a defendant's ability to obtain financial bias discovery on the relationship between a plaintiff's attorney and their *retained trial experts*. Instead, *Worley* considered the applicability of *Boecher* and *Springer* to a subset of experts that had not fully been defined by the law when *Boecher* and *Springer* were first issued – so called "hybrid experts." The wisdom of the *Worley* majority's decision to limit the financial bias discovery that can be obtained from these hybrid experts can be debated. But this case does not place that decision before this Court.

Springer was the first to suggest, in dicta, that defendants were equally entitled to obtain *Boecher* discovery on the relationship between a plaintiff's attorney and their retained trial experts. One year later, the Second District, in *Morgan, Colling & Gilbert, P.A. v. Pope*, 798 So. 2d 1 (Fla. 2d DCA 2001) elevated *Springer's* dicta into a holding:

> Recently, the Fifth District, in dicta, has suggested that "a defendant may question a plaintiff about any relationship between his or her attorney and the plaintiff's expert." *Springer v. West*, 769 So. 2d 1068, 1069 (Fla. 5th DCA 2000). This conclusion is a natural and logical extension of the requirement that defendant insurance companies disclose their financial relationships with their chosen expert witnesses. Thus, rather than departing from the essential requirements of the law, the circuit court's order conforms to the trend insuring fairness in the jury trial process by permitting discovery of a financial relationship between a witness and a party or representative.

Morgan at 3.

It was not until eight years later that the label "hybrid witness" was first given

to plaintiff's treating physicians in the context of obtaining financial bias discovery from them. *See State Farm Mut. Auto. Ins. Co. v. German*, 12 So. 3d 1286, 1287 (Fla. 5th DCA 2009) (Tropy, J., specially concurring). The first case actually authorizing such discovery was *Katzman v. Rediron Fabrication, Inc.*, 76 So. 3d 1060, 1065 (Fla. 4th DCA 2011).

Katzman explained its rationale for allowing *Boecher* discovery from hybrid witnesses as follows:

> In one respect, the physician is a "fact" witness, a treating physician. In another respect, the same physician often provides expert opinions at trial regarding the permanency of injuries, prognosis, the need for future treatment, etc. The physician is not merely a witness retained to give an expert opinion about an issue at trial. Likewise this is not a typical treating physician that a patient independently sought out. A lawyer referred the patient to the physician in anticipation of litigation and therefore the physician has injected himself into the litigation. This witness potentially has a stake in the outcome of the litigation not because of the LOP—because of the referral by the lawyer. The LOP merely gives the doctor the assurance that his/her bill will be paid directly from the proceeds of any settlement or verdict. It is the direct referral by the lawyer to the doctor that creates a circumstance that would allow the defendant to explore possible bias on the part of the doctor.
>
> As in *Boecher*, the circumstances in the present situation are different from that in *Elkins*, and the balance of interests is different.

Katzman at 1064. *See also Steinger Iscoe & Greene, P.A. v. GEICO Gen. Ins. Co*., 103 So. 3d 200 (Fla. 4th DCA 2012).

This timing of these decisions makes it clear that *Worley's* holding was limited to a class of experts that were not originally contemplated in *Springer* and *Morgan*.

No court determined that *Boecher* discovery was available from hybrid treating physicians until the Fourth District in 2011, eleven years after *Springer* was decided. *Worley* addressed only these hybrid witnesses and held that discovery into these referral relationships was prohibited by the attorney/client privilege. *Worley* thus had no impact on *Springer* or *Morgan*. When it comes to discovering the financial relationship between a party's representative and their retained experts, what is good for the goose remains good for the gander.[9] (IB at 29)

Allstate next attacks *Springer* for its statement "that an insurance company is the agent of the insured," claiming this is "contrary to basic agency law." (IB at 20) This, for lack of a better word, is nonsense. The agency relationship is created by the insurance contract, which obligates the insurer to defend claims brought against the insured and authorizes the insurer to do so in a manner that it sees fit.

Further, this Court has long recognized that insurers are the real party in interest in these cases. *See Wilder v. Wright*, 278 So. 2d 1, 4 (Fla. 1973); and *Shingleton v. Bussey*, 223 So. 2d 713, 719 (Fla. 1969). This principle is based in no small part on the admission of the insurance carriers themselves who have stated that "they are the real parties in interest in these negligence cases; that the lawyers they

[9] We would also note that defendant's attorneys and insurers may still rely on attorney/client privilege to prevent discoverability of documents containing confidential attorney/client communications related to defendant's retained expert witnesses. *See State Farm v. Knapp, supra, citing to Worley.* However, payments from an insurer to its retained CME are not privileged.

employ and provide under the insurance policies to defend the cases, are really representing the Insurance carriers in such litigation and 'when an insurance company has both the financial stake in the outcome of the litigation and the burden of carrying the costs of the defense, it is defending its own interests and is entitled to defend by its own employee, so long as he is a member of the Bar and an officer of the Court.'" *Stecher v. Pomeroy*, 253 So. 2d 421, 423 (Fla. 1971). Indeed, it is only because the insurance industry successfully lobbied the legislature to pass the non-joinder statute in 1982 that insurers are no longer named parties in these lawsuits. *Van Bibber v. Hartford Accident & Indemnity Ins. Co.*, 439 So. 2d 880 (Fla. 1983) (Boyd, J.,dissenting).

The fact the insurer is the real party in interest in third party auto cases was the basis for the Fifth District's holding in *Springer*. There, the dissent adopted the defendant's argument that *Boecher* didn't apply in third party cases because the defendant's insurance company was a non-party. Judge Harris ably dismissed those concerns as follows:

> The purpose of the inquiries is to determine whether there might be bias on the part of the defense expert. It is not the defendant in this case, and it will rarely be the defendant in any case, who has chosen the expert and who has developed a relationship with that expert. It is the insurer whose money is at stake **that is the real party in interest** and who is defending in the name of its insured. That is why the insurer controls the defense, even to the extent of naming the lawyer. By the same token, it is the plaintiff's lawyer, and not the plaintiff, who has formed the relationship with the various experts employed on plaintiff's behalf.
>
> . . .

> Since the defendant relies on his or her insurer and insurer-appointed lawyer to employ necessary witnesses, it is the relationship between those parties and the experts which is critical to the question of bias on the part of the witness. The same is true for the plaintiff.

Springer at 1069-1070. (Harris, J., concurring) (emphasis supplied)

Judge Harris also addressed Allstate's argument that admitting the evidence of payments from the insurer to the expert is somehow violative of the non-joinder statute:

> Concerning the issue of revealing the presence of insurance to the jury, the question could simply be put:
> "Doctor, how often have you appeared for those representing the defense in this case and what percentage of your income has come from them?"
> The savvy juror will know without being told that insurance is involved; the naive juror will assume the question concerns the attorneys. In either event, the jury will be apprised of the potential bias of the witness who is opining how it should rule. That is as it should be.

Springer at 1070. (Harris, J., concurring)

Make no mistake, Allstate's goal here is to thwart the truth seeking function of the trial process in third-party cases by using the non-joinder statute to hide the potential bias of its frequently retained CME experts. As Justice Polston reiterated in his dissent in *Worley*, this Court takes a "strong stand against charades in trials." *Worley* at 29-30, *citing to Boecher* (Polston, J., dissenting). Justice Polston continued:

> To limit this discovery would potentially leave the jury with a false impression concerning the extent of the relationship between the

> witness and the party by allowing a party to present a witness as an independent witness when, in fact, there has been an extensive financial relationship between the party and the expert. This limitation thus has the potential for undermining the truth-seeking function and fairness of the trial.

Id. Allstate is asking this Court to once again allow it to perpetrate the false impression of CME independence on the jurors of this state.

E. *BOECHER* DISCOVERY IS NOT PROTECTED BY ATTORNEY/CLIENT PRIVILEGE.

Allstate states that the trial court "ordered discovery of extensive communications between Dodgen, the insurance company, the defense law firm, and the compulsory medical examiners," which was protected by the attorney/client privilege. (IB at 26) This statement is both factually and legally incorrect. The trial court ordered no communications at all. The trial court ordered a list of the cases that the CME experts had testified in and the amount of money that Allstate had paid them over the last three years. Nothing more.

Further, *Worley* held that the referral relationship at issue was protected by the attorney/client privilege because the referral of the client to a certain doctor constituted a "communication that was held between the plaintiff and the attorney." *Worley* at 25. Here, there is no reason for there to be any communication between Dodgen and Allstate's retained law firm regarding Allstate's CME experts.[10]

[10] In the unlikely event that such communications exist, we readily concede they would not be discoverable.

Notably, the dissent in *Worley* did not believe that attorney/client privilege applied at all to this referral relationship:

> Additionally, the majority reasons that allowing discovery into a broader relationship between the physician and plaintiff's law firm may require production of communications *29 and materials that are protected by attorney-client privilege. See id. at 23–24. Indeed, section 90.502(2) provides that "[a] client has a privilege to refuse to disclose, and to prevent any other person from disclosing, the contents of confidential communications ... because they were made in the rendition of legal services to the client." However, as Professor Ehrhardt explains, "communications that do not involve legal advice are not protected." Ehrhardt, § 502.5, at 451. Therefore, if a communication is a recommendation of a physician from whom someone should seek medical treatment, the referral does not constitute protected legal advice. *See Hoch v. Rissman, Weisberg, Barrett*, 742 So.2d 451, 458 (Fla. 5th DCA 1999) ("Mere attendance of an attorney at a meeting, even where the meeting is held at the attorney's instance, does not render everything said or done at that meeting privileged. For communications at a meeting to be privileged, they must relate to the acquisition or rendition of professional legal services and must have a confidential character." (citation omitted)); *Watkins v. State*, 516 So.2d 1043, 1046 (Fla. 1st DCA 1987) (holding that communication regarding trial dates was not privileged because it was not intended to not be disclosed to third parties); *see also* Ehrhardt, § 502.5, at 449 ("Matters which are not communications, e.g., how counsel was retained, are not protected by the attorney-client privilege.").

Worley at 28-29 (Polston, J., dissenting)

If discovery into the referral relationship between the plaintiff and his attorney does not invade the attorney/client privilege, then discovery into Allstate's relationship with its CME experts, in which the defendant is not involved, is not limited by the privilege.

F. THE DISCOVERY AT ISSUE IS AUTHORIZED UNDER RULE 1.280.

Allstate next argues that the "subject discovery exceeds the permissible scope of Fla.R.Civ.P. 1.280(b)(5)(A)." (IB at 27) As a starting point, we note that interrogatory questions 5 and 6 are specifically authorized under Rule 1.280(b)(5)(A)(iii)(3). Next, Rule 1.280(b)(5)(A) only limits discovery that can be obtained directly *from the expert*. The plain text of Rule 1.280(b)(1) places no limitation on the discovery that may be directed to Allstate, as the real party in interest. Limitations on the scope of discovery under Rule 1.280(b)(1) are dictated by cases like *Boecher* and its progeny.

The first step in exercising judicial power is to examine the governing text. *See* Antonin Scalia and Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts* § 2, at 56 (2012) ("When deciding an issue governed by the text of a legal instrument, the careful lawyer or judge . . . examines the very words of the instrument."). "[T]he Florida Rules of Civil Procedure are construed in accordance with the principles of statutory construction." *E.g., Saia Motor Freight Line, Inc. v. Reid*, 930 So. 2d 598, 599 (Fla. 2006). Thus, a court must examine the rule's text, and if it is "clear and unambiguous," then the court must apply its "plain and ordinary meaning." *E.g., Daniels v. Fla. Dept. of Health*, 898 So. 2d 61, 64 (Fla. 2005).

The dissent in *Worley* explains why the text of Rule 1.280(b)(1) allows for of financial bias discovery:

> Under our evidence and discovery rules, information reasonably calculated to lead to the discovery of the bias of a witness, including a financial incentive for testifying a certain way, should be discoverable. Specifically, this Court has explained that "[o]ur rules of civil procedure broadly allow parties to obtain discovery of 'any matter, not privileged, that is relevant to the subject matter of the pending action,' whether the discovery would be admissible at trial, or is merely 'reasonably calculated to lead to the discovery of admissible evidence.'" *Allstate Ins. Co. v. Boecher*, 733 So.2d 993, 995 (Fla. 1999) (quoting Fla. R. Civ. P. 1.280(b)(1)).
>
> Furthermore, as Professor Ehrhardt explains, "[a]ll witnesses who testify during a trial place their credibility in issue." Charles W. Ehrhardt, Florida Evidence, § 608.1, at 619 (2016). Therefore, "[r]egardless of the subject matter of the witness's testimony, a party on cross-examination may inquire into matters that affect the truthfulness of the witness's testimony." *Id*. And section 90.608, Florida Statutes, provides that "[a]ny party, including the party calling the witness, may attack the credibility of a witness by ... [s]howing that the witness is biased." "Included within the types of matters that demonstrate bias are those that relate to the interest of the witness, favoritism, and corruption." Ehrhardt, § 608.5, at 655.
>
> The majority acknowledges that the evidence code allows a party to attack a witness's credibility based on bias and that a treating physician is subject to impeachment based on bias. See majority op. at 23 (citing § 90.608(2), Fla. Stat., and *Steinger*, 103 So.3d at 203). But the majority then improperly draws the line of allowing bias to be shown by permitting only evidence of a letter of protection from the lawyer "which may demonstrate that the physician has an interest in the outcome of the litigation." *Id*. at 23. This letter of protection involves just the one case. Allowing the jury to consider just this limited financial interest of the one case completely ignores, and improperly limits, the ability to show bias of a provider that may arise from a potentially very significant amount of compensation, and percentage of total business, from other cases brought to the provider by the law firm.

Worley at 28. (Polston, J., dissenting)

There is simply no authority to support Allstate's contention that *Boecher* discovery exceeds the permissible scope of Rule 1.280(b)(1).

G. THERE IS NO DISPARATE TREATMENT OF PLAINTIFFS AND DEFENDANTS IN THEIR ABILITY TO OBTAIN FINANCIAL BIAS DISCOVERY REGARDING RETAINED EXPERTS.

Allstate concludes its brief by again arguing that *Worley* results in disparate treatment of plaintiffs and defendants. On the discreet issue before this Court, this argument is inaccurate. Under *Boecher,* both plaintiffs and defendants may obtain financial bias discovery into the relationship between non-party law firms, insurance companies, and their retained experts. *Worley* addressed only a discreet group of hybrid witnesses that have no defense equivalent. There are certainly reasonable arguments for allowing a defendant to obtain financial bias discovery regarding these hybrid witnesses. However, that question is not before the Court in this case. This case only involves discovery that remains available to both parties.

As we explained above, *Worley* did not implicitly overrule *Springer* or *Morgan.* It explicitly overruled only the cases addressing hybrid witnesses. To the extent that this Court deems that decision erroneous, there exists a means to fix it, which we discuss below. But this case provides no vehicle to do so.

H. THE DOCTRINE OF *STARE DECISIS* COMPELS DENIAL OF THE PETITION.

Allstate is asking this Court to abandon *Boecher* in all but a handful of cases. Allstate has provided a number of policy reasons to do so. However, these policy reasons, to the extent they are valid, do not suggest that a predecessor court erred in *Boecher*. They suggest only that the majority erred in *Worley*. As a result, they do

not satisfy the high threshold this Court must meet when overturning its own precedent.

1. THERE IS NO "DIFFERENCE OF OPINION" THAT WOULD SUPPORT OVERTURNING *BOECHER* AND ITS PROGENY.

Just two weeks ago, in *State v. Poole*, SC18-245, 2020 WL 370302 (Fla. Jan. 23, 2020), this Court discussed the doctrine of *stare decisis* at length, setting forth its view on the standard that must be met before deciding to overturn its own precedent. This Court wrote that "a conclusion that the earlier court erred must be based on a searching inquiry, conducted with minds open to the possibility of reasonable differences of opinion." *Poole* at *14. This Court further held that it should not take into account policy arguments when considering issues of this type because "They can distract us from the merits of a legal question and encourage us to think more like a legislature than a court …[a]nd they can lead us to decide cases on the basis of guesses about the consequences of our decisions, which in turn can make those decisions less principled." *Poole* at *15.

In the end, this Court posited what it called a "straightforward" approach to applying *stare decisis*:

> In a case where we are bound by a higher legal authority—whether it be a constitutional provision, a statute, or a decision of the Supreme Court—our job is to apply that law correctly to the case before us. When we are convinced that a precedent clearly conflicts with the law we are sworn to uphold, precedent normally must yield.

Poole at *15. Precedent must only yield, however, when this Court court has "come

to the conclusion that it is clearly erroneous." *Id*.

Before this Court can conclude that a predecessor court erred in rendering *Boecher,* the Justices of this Court must first have a difference of opinion with respect to that decision. While it is clear from *Worley* that a difference of opinion exists with respect to the correctness of that decision, it is also clear that no such difference of opinion exists with respect to *Boecher.* A majority of the current Court -- Justices Polston, Canaday, Lawson, and LaBarga -- reaffirmed *Boecher's* validity.[11]

It is true that "perpetuating an error in legal thinking under the guides of *stare*

[11] Allstate and its Amici, Drs. Shim and Foley, call for this Court to abandon *Boecher* in all but a handful of cases. Interestingly, in *Younkin*, Petitioner's Amici, the Chamber of Commerce of the United States of America and the Florida Justice Reform Institute, supported *Boecher's* ongoing viability and simply requested that it be applied to the discovery at issue in *Worley*:

> Plaintiffs have a right, as should defendants, to attack the credibility of any expert witness by arguing to a jury that the expert may tailor his or her testimony based on referral relationships and how he or she is paid. Again, this practice promotes "the truth-seeking function of the trial process," and should remain unchanged.
>
> * * * * * * * * * * * *
>
> The potential for financial bias on behalf any party's expert witness must be and should be discoverable, relevant, and admissible.

Brief of Amici Curiae Chamber of Commerce and FJRI in *Younkin v. Blackwelder*, SC19-385, at 13.

Although the Chamber and the FJRI filed a motion for leave to appear as Amici on behalf of Dodgen, they did not end up filing a brief, likely because their arguments would have undermined Allstate's.

decisis serves no one well and only undermines the integrity and credibility of the court." *Poole* at *14. But it is equally true that acceding to Allstate's request, and undoing 21 years of jurisprudence after affirming its viability less than 3 years ago would also "undermine the integrity and credibility of the court."

2. IF *WORLEY* MUST BE FIXED, THIS COURT SHOULD USE ITS RULE MAKING AUTHORITY UNDER ART. V. § 2(A).

On the same day this Court issued *Poole*, it issued a second opinion that discussed the proper mechanism that should be used to alleviate any concerns of alleged disparate treatment arising from Worley. *See Florida Highway Patrol v. Jackson*, SC18-468, 2020 WL 370366 (Fla. Jan. 23, 2020). In *Jackson*, this Court was asked to determine whether a sovereign defendant may appeal a non-final order denying a motion to dismiss based on sovereign immunity. FHP argued a number of policy reasons why this should be so. But this Court declined to use its judicial power to decide a case or controversy under § 3(a).

Instead, it invoked its rule making power under § 2(a):

> Nonetheless, policy considerations and broad statements of purpose cannot trump the text of the rule. This case ultimately is not about the important ends furthered by the sovereign immunity subdivision; it is about the particular means that are embodied in the rule as written. *See, e.g., Freeman v. Quicken Loans, Inc.*, 566 U.S. 624, 637, 132 S.Ct. 2034, 182 L.Ed.2d 955 (2012) (statutes pursue their purposes by particular means). The remedy for the ills that FHP has identified is not to adopt a strained interpretation of the rule, but to change it.

Jackson at *6. *See also Citizens Prop. Ins. Corp. v. San Perdido Ass'n, Inc.*, 104 So. 3d 344, 353 (Fla. 2012) (Discussing a prior case where this Court declined to grant certiorari relief and instead "requested the Florida Bar Appellate Court Rules Committee to submit a proposed amendment that would add a category of non-final orders for qualified immunity in a federal civil rights claim.")

We take no position on the correctness of the majority decision in *Worley*. Instead, we reiterate that *Worley* has no relevance to the discovery at issue in this case. This case thus provides no vehicle for this Court to address the alleged "ills" that Allstate contends *Worley* created. However, to the extent that this Court has already determined that *Worley* is clearly erroneous, but is unwilling to wait for a case or controversy in which to make such a pronouncement, then the remedy is not for this Court to adopt a strained interpretation of Rule 1.280(b) that eliminates financial bias discovery in third-party cases, but to change the rule. And to do so, this Court should follow Fla. R. Jud. Admin 2.140 and first seek input, and *evidence*, from all interested parties before it enacts or changes any rule regulating the discovery of financial bias for retained experts or hybrid witnesses.

V. CONCLUSION

For the reasons set forth above, this Court should dismiss the Petition for Writ of Certiorari for lack of jurisdiction. If the Court declines to do so, the Court should

deny the Petition on its merits because Allstate has failed to demonstrate that the trial court's order departed from the essential requirements of law.

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CERTIFICATE OF FONT SIZE AND PITCH

WE HEREBY CERTIFY that the above and foregoing Respondent's Answer Brief is typed in Times New Roman, 14pt. font.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was served via-electronic mail this **18th** day of **February 2020** to: **KANSAS R. GOODEN, ESQ.**, Boyd & Jenerette, P.A., *Attorneys for Petitioner*, 201 North Hogan Street, Suite 400, Jacksonville, FL 32202; kgooden@boydjen.com; **KEVIN D. FRANZ, ESQ.,** Boyd & Jenerette, P.A., 1001 Yamato Road, Suite 102, Boca Raton, FL 33431; kfranz@boydjen.com; **MARC SCHECHTER, ESQ.,** Robinson Pecaro & Mier, P.A., *Attorneys for Defendant/Petitioner*, 501 Shotgun Road, Suite 404, Sunrise, FL 33326; mschechter@lawdrive.com; kristen@lawdrive.com; **BRETT M. ROSEN, ESQ.,** Goldberg & Rosen, P.A., *Attorneys for Plaintiff/Respondent*, 1111 Brickell Ave., Suite 2180, Miami, FL 33131; pleadings@goldbergandrosen.com; bmr@goldbergandrosen.com; **PATRICK A. BRENNAN, ESQ.,** HD Law Partners, P.A., P.O. Box 23567, Tampa, FL 33623; brennan@hdlawpartners.com; maizo@hdlawpartners.com; **JOHN HAMILTON, ESQ.,** Law Office of John Hamilton of Tampa, P.A., *Attorneys for Drs. Shim and Foley*, P.O. Box 1299, San Antonio, FL 33576; jhamlawyer@gmail.com; **JASON GONZALEZ, ESQ., AMBER STONER NUNNALLY, ESQ.,** Shutts & Bowen,

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