IN THE SUPREME COURT OF FLORIDA

STEVEN YOUNKIN,

Petitioner,

Case No.: SC19-385

v.

NATHAN BLACKWELDER,

Respondent.

_____/

AMICUS CURIAE BRIEF SUBMITTED ON BEHALF OF DRS. MICHAEL FOLEY AND JOHN SHIM IN SUPPORT OF PETITIONER STEVEN YOUNKIN

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PRELIMINARY STATEMENT

This amicus curiae brief is submitted by Michael J. Foley, M.D. F.A.C.R. a board-certified radiologist and John Shim, M.D. F.A.C.S. a board-certified Orthopedic surgeon specializing in surgery of the spine. Dr. Shim has a private clinical practice and provides expert testimony in litigation, including but not limited to, conducting compulsory medical examinations of injured parties. Dr. Foley is now providing only expert testimony and testifies approximately 55% of the time on behalf of Defendants and 45% of the time on behalf of Plaintiffs.

STATEMENT OF IDENTITY AND INTEREST

Each of these physicians have had to retain the services of the attorneys filing this brief because of burdensome and harassing discovery propounded by counsel of parties in litigation, as well as attempts to invade their fundamental constitutional right to privacy under Article I section 23 of the Florida Constitution. These physicians are filing this brief to express the concerns of all non-parties, including experts, regarding the over-reaching discovery propounded by parties to litigation. On behalf of all non-parties, these physicians have an interest in maintaining the integrity of the court system, conserving scarce judicial resources, and protecting the fundamental constitutional right to privacy and due process rights of non-parties who become involved in the litigation process.

SUMMARY OF ARGUMENT

When rendering a decision on the issues raised by this appeal, this Court should continue to protect the rights of non-parties, including experts, from over burdensome, harassing, and improper intrusions into their fundamental constitutional privacy rights granted to them by Art 1 section 23 of the Florida Constitution. As Judge Nesbitt said in the en banc decision twenty five (25) years ago in Syken v. Elkins, 644 So. 2d 539 (Fla. 3d DCA 1994), Florida courts had gone too far in permitting burdensome discovery into non-party affairs which served "only to emphasize in unnecessary detail that which would be apparent to the jury on the simplest cross-examination." Syken, 644 So. 2d at 545 (internal citations omitted). Even today, too many litigants are still "draining the pond" rather than "using rod and reel, or even a reasonably sized net to collect the fish from the bottom." In re IBM Peripheral EDP Devices Antitrust Litigation, 77 F.R.D. 39, 42 (N.D. Cal. 1977). Non-parties, like Dr. Foley and Dr. Shim, are being forced to retain personal counsel to fend off such harassing, burdensome, and improper discovery onslaughts, costing them significant sums of money and needlessly burdening the courts with hearings on motions for protective orders. This is exactly the "chilling" effect that this Court, and other courts in Florida, forewarned litigants about: the ability to obtain licensed and qualified physicians to testify and provide expert services to litigants. In Elkins v. Syken, 672 So. 2d 517

(Fla. 1996), this Court expressly identified the aforementioned "chilling" effect over twenty-three years ago, which led to the adoption of Fla. R. Civ. P. 1.280(b)(5). That rule limits discovery to **non-privileged information** that is calculated to lead to admissible evidence. It further limits discovery from experts both in the methods that can be used, and in the content that can be obtained. It is the position of these physicians that to insure fairness to both parties and to protect the fundamental constitutional privacy rights of the non-parties this Court should limit the appropriate inquiry to:

1. The compensation of the expert that has or will be paid ***in the pending case***;

2. The percentage of litigation work relative to the percentage of professional time devoted to other work of the expert;

3. The number of times the expert has worked for the party (and its representative) and/or the law firm who retained the expert;

4. The percentage of total earned income earned from performing expert work for litigation matters;

5. The identity of each case in which the expert has testified, whether by deposition or at trial, going back a reasonable period of time, which is normally three years.

The parties must be prohibited from invading a non-party's fundamental and constitutional right to privacy and from asking the expert what their earned income is from expert work other than what is being paid in the pending case or from requesting production of the expert's financial and business records except for the files related to the pending case. Any other business or financial records should only be produced under the most extraordinarily unusual or compelling circumstances. Furthermore, non-party experts must not be compelled to compile or produce non-existent documents. In all cases, the non-party expert's fundamental constitutional right to privacy regarding their financial affairs must be observed and respected.

ARGUMENT

The Petitioner's brief focuses primarily on the disparate treatment the lower courts' application of the Worley v. Central Florida Young Men's Christian Assn., Inc., 228 So. 3d 18 (Fla. 2017), decision and how it is unfairly affecting the fairness of the litigation process with regards to defendants and defendants' counsel. The effect, it is argued, is that defendants are placed in a disadvantaged position which ultimately negatively affects the credibility of their expert witnesses disproportionately. In cases where the tortfeasors are insured, there is a single payer for numerous cases in which the expert may have been retained. The same is not true for the plaintiffs whose retained experts, or "treaters," are paid by many

different law firms. With regards to Dr. Foley, his testimonial list has, for many years, supported the fact that he testifies in deposition or trial approximately 55% of the time for the defense and 45% of the time for the Plaintiff. However, the Boecher evidence of the amount he has been paid by the "defendant, his or her attorneys or representatives," is significantly more "impeaching" when he is a defense expert as opposed to when he is a plaintiff's expert, resulting in a skewed view by the jury of his potential bias for the defense versus the bias of the plaintiff's expert. Even if the referral relationship between a defense law firm and its expert is protected, like it is for plaintiffs' law firms, that does not solve the problem of the question of how much the expert has been paid by the "representatives" of the defendant. The amounts paid to the defense expert gives rise to the inference that either an insurance company is involved, or the defendant is a wealthy and litigious party. It cannot be seriously disputed, that in tort cases, such as this one, the issues of liability and damages frequently become to a large extent, a "battle of the experts." As a result, impeachment of an expert for one side, or the other, can and does have a significant effect on the outcome of the case.

While the Petitioner's argument is a significant concern affecting the fairness of the litigation process, from the non-party experts' perspective, what frequently is lost in the analysis of the jury's "right to know," information which ***may*** demonstrate the potential bias of the witness (which this Court has repeatedly

stated is an important but clearly a ***collateral*** issue), is how the real world of litigation is ignoring the teachings of this Court over twenty three (23) years ago:

> In essence, an overly burdensome, expensive discovery process will cause many qualified experts, including those who testify only on an occasional basis, to refrain from participating in the process, ***particularly if they have the perception that the process could invade their personal privacy***. To adopt petitioners' arguments could have a chilling effect on the ability to obtain doctors willing to testify and could cause future trials to consist of many days of questioning on the collateral issue of expert bias rather than on the true issues of liability and damages.

Elkins v. Syken, 672 So. 2d 517, 522 (Fla. 1996) (***emphasis supplied***). What is unfortunate is that many attorneys in their zeal to obtain "impeaching evidence" either do not understand, or choose to ignore, the concerns expressed by this Court in *Elkins* and thus trample on the non-party's rights.[1] Questions designed to elicit the expert's income from other non-related cases and parties are frequently asked in deposition and at trial. Burdensome and harassing requests for business and financial records are frequently included in subpoenas served on the expert or the

[1]Professional Rule of Conduct 4-4.4 "In representing a client, **a lawyer may not** use means that have no substantial purpose other than to embarrass, delay, or burden a third person **or knowingly use methods of obtaining evidence that violate the legal rights of such a person" .** Professional Rule of Conduct 4-3.4 (e) in trial, allude to any matter that the lawyer does not reasonably believe is relevant **or that will not be supported by admissible evidence,** assert personal knowledge of facts in issue except when testifying as a witness, or state a personal opinion as to the justness of a cause, the credibility of a witness, the culpability of a civil litigant, or the guilt or innocence of an accused. (**emphasis supplied**).

expert's "records custodian" in discovery depositions.[2] Thus, the non-party expert is forced to retain an attorney to protect those rights resulting in many unnecessary evidentiary hearings which burdens the experts, the parties, and the courts. In many cases, the non-party experts do not even know what their rights are, and some are unwilling to incur the expense of hiring personal counsel. They simply provide the protected information in response to the subpoena or respond to the improper questions in deposition or at trial, thus having their privacy rights ignored and their due process rights violated.

Three (3) years after deciding Elkins, this Court was presented with the question as to whether Its' decision in Elkins, and the subsequent changes to Florida Rule of Civil Procedure 1.280, prevented either the plaintiff or the defendant in a lawsuit, from sending discovery to each other inquiring about the respective party's relationship with the experts they disclosed that they would be using as witnesses at trial. Allstate Ins. Co. v. Boecher, 733 So. 2d 993 (Fla. 1999), was a suit filed against Allstate Insurance, the automobile accident victim's uninsured motorist carrier. Allstate revealed that it would call as a trial expert witness, an expert from Biodynamics Research Corporation (hereinafter "Biodynamics") an accident reconstruction and injury causation firm. The plaintiff

[2] This is despite the limitations of Florida Rule of Civil Procedure 1.280(b)(5) and the decision in Smith v. Eldred, 96 So. 3d 1102 (Fla. 4th DCA 2012), which held that a subpoena that demanded business records from the expert is not a discovery tactic that is condoned by the Rule.

propounded interrogatories to Allstate asking about its relationship with Biodynamics, including the identity of cases where Allstate had retained Biodynamics' experts and the amount of fees Allstate had paid Biodynamics nationally. Allstate objected, and the trial court overruled the objection. The issue presented for review in Boecher was whether a party was prohibited from obtaining information, during discovery, from the opposing party regarding the extent of that party's relationship with their expert. Boecher, 733 So.2d at 994. This Court pointed out the significant differences between Elkins and Boecher which led to Its' decision in Boecher:

1. In Elkins the financial information was sought directly from the non-party expert witness. In Boecher the financial information was sought only from the opposing party who was an insurance company.

2. In Elkins the prohibited information requested directly from the expert included the expert's income and relationships, not only with the party who retained him in the case, but with others. In Boecher the information requested from the party was limited only to the opposing party's ongoing relationship with their expert in that case. Boecher, 733 So. 2d at 997.

3. In Elkins this Court was concerned about the fundamental privacy rights of the expert, while in Boecher, this Court found that the party [Allstate] had

no privacy rights in that same information.[3] This Court concluded that the analysis of the competing interests when a party seeks financial information directly from the expert as in Elkins, and the party seeking the information directly from the opposing party as was the case in Boecher, were qualitatively different:

> On one side of the scale, we focused in Elkins on protecting the rights of the expert against unduly intrusive requests. ***We expressed concern for the expert having to divulge matters regarding personal financial privacy and further expressed concern for the burden imposed on the expert of compiling the requested information.*** A reading of rule 1.280(b)(4) in its entirety reveals an intent to restrict the information that can be discovered from the expert, even though the discovery is answered by the party. For example, the rule states: "[T]he expert shall not be required to disclose his or her earnings," and "[a]n expert may be required to produce financial and business records only under the most unusual and compelling circumstances." Fla. R. Civ. P. 1.280(b)(4)(A)(iii).The opposing party has no corresponding "right" to prevent this discovery.

Boecher, 733 So. 2d at 998–99. Both Elkins and Boecher prohibited questions and discovery directly to the expert regarding income received other than what he or she had been paid in the pending case.

[3] This leads to another problem concerning the expert's fundamental constitutional privacy right in his financial information. Typically, the expert is not informed of a plaintiff's attempt to obtain Boecher information from the defendant regarding the amount of money the insurance carrier in that case has paid the retained expert, therefore, the non-party expert has no opportunity to object and indeed, his or her objection would most likely be denied based on this Court's decision in Boecher. This occurs in multiple cases with multiple different insurance carriers so that the expert's income from expert work is ultimately revealed to a large extent over time. This is an invasion that this Court stated in Elkins, Boecher, and in Rule 1.280, F.R.C.P., should not be done because of the expert's privacy rights.

IN FLORIDA, AN INDIVIDUAL, INCLUDING AN EXPERT, HAS A FUNDAMENTAL CONSTITUTIONAL RIGHT OF PRIVACY IN HIS OR HER FINANCIAL INFORMATION

On November 4th, 1980, Art. I Sec 23 Right of Privacy was added to the Florida Constitution by the citizens of this State: "Every natural person has the right to be let alone and free from governmental intrusion into his private life except as otherwise provided herein."Five (5) years later in 1995, this Court held that this ***fundamental*** constitutional right of privacy protected every person in Florida from intrusion into their financial affairs.

> The citizens of Florida opted for more protection from governmental intrusion when they approved Article I, section 23, of the Florida Constitution. This amendment is an independent, freestanding constitutional provision which declares the fundamental right to privacy. Article I, section 23, was intentionally phrased in strong terms. **The drafters of the amendment rejected the use of the words "unreasonable" or "unwarranted" before the phrase "governmental intrusion" in order to make the privacy right as strong as possible.** Since the people of this state exercised their prerogative and enacted an amendment to the Florida Constitution which expressly and succinctly provides for a strong right of privacy not found in the United States Constitution, it can only be concluded that the right is much broader in scope than that of the Federal Constitution. ... we find that the law in the state of Florida recognizes an individual's legitimate expectation of privacy in financial institution records.

Winfield v. Div. of Pari-Mutuel Wagering, Dep't of Bus. Regulation, 477 So. 2d 544, 548 (Fla. 1985) (**emphasis supplied**). Since that decision, this Court has reiterated that the privacy rights granted by Art. I section 23 are much broader in scope and stronger than the privacy rights found in our federal constitution and

statutes. For example, in Weaver v. Myers, 229 So.3d 1118 (Fla. 2017), this Court stated:

> [3] We have explained that the right to privacy in the Florida Constitution is broader, more fundamental, and more highly guarded than any federal counterpart:
> This amendment is an independent, freestanding constitutional provision which declares the fundamental right to privacy. Article I, section 23, was intentionally phrased in strong terms. The drafters of the amendment rejected the use of the words "unreasonable" or "unwarranted" before the phrase "governmental intrusion" in order to make the privacy right as strong as possible. Since the people of this state exercised their prerogative and enacted an amendment to the Florida Constitution which expressly and succinctly provides for a strong right of privacy not found in the United States Constitution, it can only be concluded that the right is much broader in scope than that of the Federal Constitution. Winfield v. Div. of Pari–Mutuel Wagering, 477 So.2d 544, 548 (Fla. 1985); see *N. Fla.* Women's Health & Counseling Servs., Inc. v. State, 866 So.2d 612, 634–35 (Fla. 2003). The right of privacy "ensures that individuals are able 'to determine for themselves when, how and to what extent information about them is communicated to others.'" Shaktman v. State, 553 So.2d 148, 150 (Fla. 1989) (quoting A. Westin, Privacy and Freedom 7 (1967)).

Weaver, 229 So.3d at 1125-26. The invasion of this fundamental constitutional privacy right of a witness is not allowed by simply demonstrating the potential relevance of the financial information sought.[4] It is the burden of the party seeking to invade the constitutional right to privacy to show a compelling need that outweighs the extremely strong constitutional privacy right of the non-party; it is hard to imagine a compelling need for information on the collateral issue of bias

[4] Even relevant information is not necessarily admissible. §90.403, Fla. Stat..

that can outweigh the fundamental privacy right of a Florida citizen. When a non-party asserts a right to privacy under the State Constitution, our courts ***must*** engage in a balancing test, weighing the need for the information against the privacy interests of the witness from whom the information is sought. If the witness establishes the existence of a legitimate expectation of privacy, the party seeking to obtain the private information has the burden of establishing a need sufficient to outweigh the privacy interest. Nucci v. Target Corp., 162 So. 3d 146 (Fla. 4th DCA 2015); See also, Rousso v. Hannon, 146 So.3d 66 (Fla. 3d DCA 2014); Rowe v. Rodriguez-Schmidt, 89 So. 3d 1101 (Fla. 2d DCA 2012) (finding the "right of privacy under the Florida Constitution protects the financial information of persons if there is no compelling reason to require disclosure; this is because personal finances are among those private matters kept secret by most people."). It is a departure from the essential requirements of law to fail to conduct a balancing of interests test in an evidentiary hearing before a court orders disclosure of protected financial information. See Berkeley v. Eisen, 699 So.2d 789 (Fla. 4th DCA 1997); Higgs v. Kampgrounds of Am., 526 So.2d 980, 981 (Fla. 3d DCA 1988); Westco, Inc. v. Scott Lewis' Gardening & Trimming, Inc., 26 So.3d 620 (Fla. 4th DCA 2009). See also Josifov v. Kamal-Hashmat, 217 So. 3d 1085, 1087 (Fla. 2d DCA 2017); Gulfcoast Surgery Center, Inc. v. Fisher, 107 So.3d 493 (Fla. 2d DCA 2013).

The expansion of bias discovery from defendants has created both an inequity in the treatment of defendants as opposed to plaintiffs, but more importantly, it has negatively impacted the fundamental constitutional right to privacy of the non-party experts. This Court is being presented with a problem that requires a decision that (1) ensures both parties are treated equally regarding their right to bias information, (2) protects the integrity of the litigation process and reduces the burden placed on the parties, witnesses and the courts, while at the same time (3) ensures that the non-party witnesses' rights, and especially their constitutional right to privacy, is protected to the greatest extent possible. A resolution of these issues can, as this Court has recognized, 1) chill the willingness of experts to become involved in litigation out of fear of becoming embroiled in the litigation themselves and of being stripped of their privacy rights, 2) affect physicians who may refuse to treat patients who could end up in litigation, and 3) potentially inflate the costs of litigation and burden the courts leading to a lack of public confidence in the credibility of the civil court process. Elkins, 672 So. 2d at 522. Drs. Foley and Shim request this Court to render a decision that cannot be interpreted as diminishing, or worst yet, eviscerating a non-parties' fundamental privacy rights granted to them by Art. I section 23 of the Florida Constitution.

Drs. Foley and Shim are constantly fighting intrusive and inappropriate discovery requests from the parties in litigation. As an example of what is

happening in the real world of litigation, a present ongoing dispute involves a subpoena duces tecum that was served on one of the doctors filing this brief "records custodian" demanding that the expert's records custodian produce the following twenty two (22) categories of documents:

EXHIBIT "A"

1. Any and all documents and/or tangible materials/medical records, MRI or x-ray films and tests which have been provided to you regarding any aspect of this case from any source. THIS INCLUDES MEDICAL RECORDS FROM OTHER HEALTH CARE PROVIDERS.

2. Digital report with all meta data.

*3. Your entire file, concerning **** and/or this case including but not limited to, hard copies of emails sent and received, any and all reports, letters, memoranda and/or notes generated and notes, handwritten or otherwise, graphs, computer printouts, all documents completed by the claimant, copies of tests and test results completed by your office or at your direction, including any and all questions and all models, illustrations, photographs, exhibits or documents of any kind which you intend or contemplate using to explain, illustrate or support your testimony at the trial of this matter. This includes computer printouts whether printed or not at the time this subpoena is served.*

4. All records of time spent by you or any member of your staff in connection with the work performed regarding this case, whether billed for or not. If none are documented then be prepared to advise the attorneys as to the amount you will charge for time spent as of date of testimony.

5. Your current curriculum vitae.

6. Your current fee schedule.

7. Publications in which the accepted principles (including basis for test administration and interpretation) and theories upon which you relied to reach your conclusion and opinions, including professional journals, text, or published position papers emanating from seminars and/or symposiums.

8. Any and all articles and published material authored by you, including the title, date and publishing company of any text, and the name and page numbers of any periodical which contains any article authored by you which you feel are relevant in this case.

9. A list of all cases in which you have testified as an expert in trial or deposition, conducted an investigation (records review), evaluation and/or prepared a report, for the last three years, specifying the names of parties, identity of counsel, dates such evaluations, records review, or testimony occurred and whether such case was a referral from plaintiff or defense.

10. A list of ALL cases (limited to three years) in which you have received referrals from the named defendant, or the law firm defending this case or the insurance company who engaged the law firm defending this case, specifying:

A. The names of the parties.

B. The amount of all monies paid to you on the case in question and from what source.

C. The identity of the party who retained you and whether it was plaintiff or defense. See Allstate Insurance Co. v. Hodges, *28 FLW Dl9IO (Fla. 2nd DCA 2003) and* Allstate Ins. Co. v. Boecher, *733 So. 2d 993 (Fla. 1999)*

11. Printed hard copies of all email to or from any source referencing this case.

12. Any and all test administration manuals and scoring published by the publisher of the tests you administered whether you relied upon them or not. Toe actual test booklets published by the creators of the tests you used i.e. if MMPI2, then most recent manual published by

Pearson Assessment,, in addition to any other manuals you relied upon or used to determine cutoff scores for the application, interpretation and administration of any and all tests given. These do not need to be copied but should be available for you to reference should questions about scoring arise.

13. Hard copies of any and all PowerPoint presentations and/or outlines given or outlines produced for any talks or speeches.

14. All time records, diaries, and bills prepared and rendered in connection with your investigation and evaluation of the issues involved in this lawsuit as well as all documents reflecting monies/fees paid or received. (To include members of your staff) This includes any money paid to you by any party, attorney, carrier or self-insured having to do with research and or publication.

15. Copies of any and all templates used in the generation of any letters or reports.

16. If more than one physician signs the medical reports generated from your office on this patient, provide documentation showing the monies received by each individual physician relating to this Plaintiff.

17. Any and all items, tapes, things, papers, DVD's, CD's, that were given or sent to the doctor by any source regarding this case, including, but not limited to, surveillance materials, whether that material was returned to the individual who provided it to the doctor. If the material was returned, the undersigned requests that it be obtained in time for the deposition, so the Plaintiff can determine all of the information that may have been provided to this witness.

18. The undersigned specifically requests the doctor NOT destroy or eliminate or remove any items requested in this document from his/her file regarding the Plaintiff.

19. All letters, documents, forms and/or reports either in electronic or paper format regarding this Plaintiff. This is specifically to avoid a situation where the deponent may claim other documents might be in another file or in the custody of someone else in the office.

20. Copies of all bills, breakdown as to what professional charged for what professional service in this case.

21. Copies of all income received from forensic cases for the last three (3) years.

22. If affiliated with a University please bring all Notice of Outside Activities regarding this case.

This is certainly not the worst unauthorized[5] discovery request that has been served on these experts. The demand for these documents evidences a total disregard of this Court's admonition in Elkins that:

> it is essential that we keep in mind the purpose of discovery. Pretrial discovery was implemented to simplify the issues in a case, to eliminate the element of surprise, to encourage the settlement of cases, to avoid costly litigation, and to achieve a balanced search for the truth to ensure a fair trial. Dodson v. Persell, 390 So.2d 704 (Fla.1980); Surf Drugs, Inc. v. Vermette, 236 So.2d 108 (Fla.1970). Discovery was never intended to be used as a tactical tool to harass an adversary in a manner that actually chills the availability of information by non-party witnesses; nor was it intended to make the discovery process so expensive that it could effectively deny access to information and witnesses or force parties to resolve their disputes unjustly. To allow discovery that is overly burdensome and that harasses, embarrasses, and annoys one's adversary would lead to a lack of public confidence in the credibility of the civil court process.

Elkins, 672 So. 2d at 522. Apparently, attorneys must be forced to curb their penchant for abusive discovery requests which invade the constitutionally protected privacy rights of experts and abuses both the discovery process and the

[5] Rule 1.280 limits both the methods and scope of discovery to interrogatories and a deposition of the expert. As stated above, nowhere does it authorize the deposition of the "records custodian" of the revealed expert. Smith v. Eldred, 96 So. 3d 1102 (Fla. 4th DCA 2012).

due process rights of the non-litigant witnesses. The Florida Rules of Professional Conduct demand better behavior. The burden to accomplish this should not be placed on the non-parties. Drs. Foley and Shim believe that the solution can be found by returning to the underlying philosophy and holding of this Court in Elkins by making it clear that the information that can be demanded of the parties and experts regarding information on the collateral issue of bias is strictly limited to Rule 1.280 unless unusual and extraordinarily compelling evidence is presented to the trial court to justify a deviation from those restrictions. The information required by Fla. R. Civ. P. 1.280(b)(5) is sufficient to reveal to a jury the potential bias of the expert witness.

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CONCLUSION

Drs. Foley and Shim respectfully request that this Court re-stress the importance of protecting a non-party witness' constitutional right to privacy in his or her personal financial income. The parties and the parties' attorneys must be reminded against invading a non-party's fundamental and constitutional right to privacy and from asking the expert what their earned income is from expert work, other than what is being paid in the pending case or from requesting production of the expert's financial and business records. Any other business or financial records should only be produced under the most extraordinarily unusual or compelling circumstances. A party's right to conduct expert discovery *upon an expert* should be expressly limited to the discovery permitted by Fla. R. Civ. P. 1.280(5). Furthermore, non-party experts must not be compelled to compile or produce non-existent documents.

CERTIFICATE OF SERVICE

WE HEREBY CERTIFY that a copy of the foregoing was uploaded and served in the eportal to: **George H. Anderson, III Esq.**, Dutch.Anderson@newlinlaw.com; Anderson.pleadings@newlinlaw.com; Dan Newlin & Partners, 7335 W Sand Lake Road, Orlando, FL 32819; **Mark A. Nation, Esq.**, and **Paul W. Pritchard, Esq.**, bhirt@nationlaw.com, mnation@nationlaw.com, ppritchard@nationlaw.com, The Nation Law Firm, 570 Crown Oak Centre Drive, Longwood, FL 32750; **Amanda E. Wright, Esq.**, OrlandoLegal@Allstate.com, Law Offices of Robert J. Smith, 390 North Orange Avenue, Suite 895, Orlando, FL 32801-1635; **Kansas R. Gooden, Esq.** and **Geneva R. Fountain, Esq.**, kgooden@boydjen.com, dperalta@boydjen.com, kbarnett@boydjen.com, gfountain@boydjen.com, Boyd & Jenerette, PA, 201 N. Hogan Street, Suite 400, Jacksonville, Florida 32202; **Jason Gonzalez, Esq.** and **Amber Stoner Nunnally, Esq.**, jasongonzalez@shutts.com, anunnally@shutts.com, mpoppell@shutts.com, Shutts & Bowen LLP, 215 S. Monroe Street, Suite 804, Tallahassee, FL 32301, and **William W. Large, Esq.** and **Elaine D. Walter, Esq.**, william@fljustice.org ewalter@bodylawgroup.com, ServiceMIA@bodylawgroup.com, Florida Justice Reform Institute, 210 S. Monroe St., Tallahassee, FL 32301 and **Andrew S. Bolin, Esq.** and **Chizom Okebugwu,**

Esq., asb@bolin-law.com, cjo@bolin-law.com, Bolin Law Group, 1905 E. 7th Avenue, Tampa, FL 33605-3809, this 22nd day of July, 2019.

/s/ Patrick A. Brennan
PATRICK A. BRENNAN, ESQUIRE

JOHN HAMILTON, ESQUIRE

CERTIFICATE OF COMPLIANCE

In accordance with Florida Rule of Appellate Procedure 9.210(a)(2), the undersigned counsel hereby certifies that his Brief complies with the font requirements of the Rule: Times New Roman 14-point font.

/s/ Patrick A. Brennan
PATRICK A. BRENNAN, ESQUIRE

JOHN HAMILTON, ESQUIRE