Filing # 103773047 E-Filed 02/24/2020 11:46:00 AM

IN THE DISTRICT COURT OF APPEAL, SECOND DISTRICT, LAKELAND FLORIDA

PATTY DAVIS,
PLAINTIFF/APPELLANT

CASE NO: **15-CA-007914**

VS

LABORATORY CORPORATION OF AMERICA; LABORATORY CORPORATION OF AMERICA HOLDINGS,
DEFENDANT/APPELLEE

APPELLATE CASE NO: **17-1790**

APPEAL FROM THE CIRCUIT COURT, CIVIL DIVISION, OF THE THIRTEENTH JUDICIAL CIRCUIT OF THE STATE OF FLORIDA, IN AND FOR HILLSBOROUGH COUNTY

THE HONORABLE CHERYL K. THOMAS
CIRCUIT COURT JUDGES

J. ANDREW MEYER ESQ.
ANDREW@JANDREWMEYER.COM

CHRISTINA COLLINS ESQ
CLC@HARMONWOODSLAW.COM

ATTORNEY FOR APPELLANT

JAMES VANLANDINGHAM ESQ.
JAMES.VANLANDINGHAM@HOGANLOVELLS.COM

CAROL A. LICKO ESQ.
CALOL.LICKO@HOGANLOVELLS.COM

ATTORNEY FOR APPELLEE

RECEIVED, 02/24/2020 11:48:30 AM, Clerk, Supreme Court

MASTER INDEX

INDEX TO THE ORIGINAL RECORD ON APPEAL

ITEM	FILE DATE	INSTRUMENT	PAGE
		15-CA-007914	
1	6/14/2017	APPEAL CASE SUMMARY	1 - 4
2	8/28/2015	COMPLAINT	5 - 22
3	10/19/2015	ANSWER AND AFFIRMATIVE DEFENSES	23 - 34
4	10/22/2015	MOTION FOR ADMISSION PRO HAC VICE ELISABETH S WALDEN	35 - 39
5	10/22/2015	MOTION FOR ADMISSION PRO HAC VICE STEVEN F BARLEY	40 - 44
6	10/23/2015	ORDER GRANTING VERIFIED MOTIONS TO APPEAR PRO HAC VICE SIGNED BY THE HONORABLE CHERYL K. THOMAS ON OCTOBER 28, 2015	45 - 46
7	11/30/2015	CERTIFICATE OF NON-OBJECTION	47 - 64
8	12/18/2015	AMENDED DESIGNATION OF EMAIL ADDRESS	65 - 66
9	1/13/2016	RESPONSE TO REQUEST TO PRODUCE PLAINTIFF'S RESPONSES TO DEFENDANTS' FIRST REQUEST FOR PRODUCTION	67 - 72
10	4/11/2016	RESPONSE TO REQUEST TO PRODUCE DEFENDANTS OBJECTIONS AND RESPONSES TO PLAINTIFF S FIRST REQUESTS FOR PRODUCTION	73 - 98
11	8/23/2016	AGREED ORDER CONFIDENTIALITY	99 - 113
12	12/28/2016	MOTION FOR JUDGMENT ON THE PLEADINGS	114 - 123
13	1/24/2017	RESPONSE IN OPPOSITION TO DEFENDANTS' MOTION FOR JUDGMENT ON THE PLEADINGS	124 - 141
14	1/24/2017	NOTICE OF FILING EXHIBIT "A" RESPONSE IN OPPOSITION TO MOTION FOR JUDGMENT	142 - 155
15	3/22/2017	REPLY IN SUPPORT OF MOTION FOR JUDGMENT ON THE PLEADINGS	156 - 238
16	3/23/2017	RESPONSE IN OPPOSITION TO DEFENDANTS MOTION FOR JUDGMENT ON THE PLEADINGS - PLNTFS SUPPLEMENTAL	239 - 246
17	4/6/2017	FINAL ORDER OF DISMISSAL FOR LACK OF SUBJECT-MATTER JURISDICTION SIGNED BY THE HONORABLE CHERYL THOMAS ON APRIL 6, 2017	247 - 248
18	4/28/2017	E-FILED FINAL APPEAL CIRCUIT CIVIL TO 2ND DCA andrew@jandrewmeyer.com	249 - 253
19	5/4/2017	NOTICE OF FILING EXHIBIT A TRANSCRIPT OF HEARING BEFORE THE HONORABLE CHERYL K. THOMAS ON MARCH 28, 207	254 - 310

DIVISION A

CASE SUMMARY

CASE NO. 15-CA-007914

Davis, Patty vs Laboratory Corporation of America

§
§
§
§
§

Location: **Division A**
Judicial Officer: **Thomas, Cheryl K**
Filed on: **08/28/2015**
Uniform Case Number: **292015CA007914A001HC**

CASE INFORMATION

Statistical Closures
04/06/2017 Disposed by Judge

Case Type: **Declaratory Judgment**

Case Flags: **JURY CASE**
FILE HOME LOCATION - TAMPA

DATE	CASE ASSIGNMENT

Current Case Assignment

Case Number	15-CA-007914
Court	Division A
Date Assigned	08/28/2015
Judicial Officer	Thomas, Cheryl K

PARTY INFORMATION

		Lead Attorneys
Plaintiff	**Davis, Patty**	**COLLINS, CHRISTA L, Esquire** *Retained* 813-222-3600(W)
Defendant	**Laboratory Corporation of America**	**LICKO, CAROL ANN** *Retained* 305-459-6500(W)
	Laboratory Corporation of America Holdings	**LICKO, CAROL ANN** *Retained* 305-459-6500(W)

DATE	EVENTS & ORDERS OF THE COURT	INDEX
05/05/2017	ORDER FROM DCA *05/04/17 2D17-1790*	
05/04/2017	ACKNOWLEDGEMENT OF NEW CASE *2D 17-1790*	
05/04/2017	NOTICE OF FILING *EXHIBIT A*	
05/02/2017	LETTER OF TRANSMITTAL *NOA TO DCA*	
04/28/2017	E-FILED FINAL APPEAL CIRCUIT CIVIL TO 2ND DCA *andrew@jandrewmeyer.com*	*Vol./Book 24911, Page 1805, 5 pages Instrument# 2017170180*
04/06/2017	**FINAL ORDER** (Judicial Officer: Thomas, Cheryl K) Party (Davis, Patty; Laboratory Corporation of America; Laboratory Corporation of America	

	Holdings) OF DISMISSAL FOR LACK OF SUBJECT MATTER JURISDICTION (GRANTED) SIGNED BY JUDGE CT 4/6/17
03/27/2017	NOTICE OF FILING *DEFENDANT'S OBJECTIONS AND RESPONSES TO PLAINITFF'S FIRST AND SECOND SET OF INTERROGATORIES*
03/27/2017	NOTICE OF FILING *PLAINITFF'S AMENDED ANSWERS TO DEFENDANT'S FIRST SET OF INTERROGATORIES*
03/23/2017	RESPONSE IN OPPOSITION TO *DEFENDANTS MOTION FOR JUDGMENT ON THE PLEADINGS - PLNTFS SUPPLEMENTAL*
03/22/2017	REPLY *IN SUPPORT OF MOTION FOR JUDGMENT ON THE PLEADINGS*
01/24/2017	NOTICE OF HEARING *03/28/2017 1:30 PM*
01/24/2017	NOTICE OF FILING *EXHIBIT "A" RESPONSE IN OPPOSITION TO MOTION FOR JUDGMENT*
01/24/2017	RESPONSE IN OPPOSITION TO *DEFENDANTS' MOTION FOR JUDGMENT ON THE PLEADINGS*
12/28/2016	MOTION FOR JUDGMENT Party: Defendant Laboratory Corporation of America; Defendant Laboratory Corporation of America Holdings *ON THE PLEADINGS*
08/23/2016	AGREED ORDER (Judicial Officer: Thomas, Cheryl K) Date Signed: 08/23/2016 *CONFIDENTIALITY*
06/29/2016	NOTICE OF SERVICE OF ANSWERS TO INTERROGATORIES *PLAINTIFF'S AMENDED ANSWERS TO DEFENDANT'S FIRST SET*
04/11/2016	RESPONSE TO REQUEST TO PRODUCE *DEFENDANTS OBJECTIONS AND RESPONSES TO PLAINTIFF S FIRST REQUESTS FOR PRODUCTION*
04/11/2016	NOTICE OF SERVICE OF ANSWERS TO INTERROGATORIES *DEFENDANTS NOTICE OF SERVICE OF OBJECTIONS AND RESPONSES TO PLAINTIFF S SECOND SET OF INTERROGATORIES*
03/07/2016	NOTICE OF SERVICE OF REQUEST TO PRODUCE *PLAINTIFF'S FIRST REQUEST TO DEFENDANTS*
03/07/2016	NOTICE OF SERVICE OF INTERROGATORIES *PLAINTIFF'S SUPPLEMENTAL INTERROGATORY TO DEFENDANTS*
01/13/2016	RESPONSE TO REQUEST TO PRODUCE *PLAINTIFF'S RESPONSES TO DEFENDANTS' FIRST REQUEST FOR PRODUCTION*

01/13/2016	NOTICE OF SERVICE OF ANSWERS TO INTERROGATORIES
01/12/2016	NOTICE OF SERVICE OF ANSWERS TO INTERROGATORIES *(AND OBJECTIONS) / (FIRST SET)*
12/18/2015	DESIGNATION OF EMAIL ADDRESS *(AMENDED)*
12/01/2015	REQUEST FOR COPIES
11/30/2015	CERTIFICATE OF NON-OBJECTION
11/10/2015	REQUEST FOR PRODUCTION
11/10/2015	NOTICE OF INTENT TO SUBPOENA *COMMERCIAL RISK MANAGEMENT, INC., DECEMBER 16, 2014 AT 9:00 AM*
11/10/2015	NOTICE OF INTENT TO SUBPOENA *ORTHOPEDIC MEDICAL GROUP OF TAMPA BAY, P.A., DECEMBER 16, 2014 AT 9:00 AM*
11/10/2015	NOTICE OF SERVICE OF INTERROGATORIES
10/29/2015	NOTICE OF SERVICE OF INTERROGATORIES
10/23/2015	ORDER GRANTING MOTION TO - FOR (Judicial Officer: Isom, Claudia R) Date Signed: 10/22/2015 Party: Defendant Laboratory Corporation of America; Defendant Laboratory Corporation of America Holdings *APPEAR PRO HAC VICE*
10/22/2015	MOTION FOR ADMISSION PRO HAC VICE Party: Defendant Laboratory Corporation of America; Defendant Laboratory Corporation of America Holdings *STEVEN F BARLEY*
10/22/2015	MOTION FOR ADMISSION PRO HAC VICE Party: Defendant Laboratory Corporation of America; Defendant Laboratory Corporation of America Holdings *ELISABETH S WALDEN*
10/19/2015	ANSWER AND AFFIRMATIVE DEFENSES Party: Defendant Laboratory Corporation of America; Defendant Laboratory Corporation of America Holdings
08/28/2015	E-FILED SUMMONS ISSUED *X 2 service.tsh@harmonwoodslaw.com ; tsh@harmonwoodslaw.com*
08/28/2015	E-FILED REQUEST FOR SUMMONS TO BE ISSUED
08/28/2015	REQUEST FOR SUMMONS TO BE ISSUED (E-Filed)
08/28/2015	REQUEST FOR DIVISION ASSIGNMENT (E-FILING)
08/28/2015	COMPLAINT

08/28/2015	CIVIL COVER SHEET	

DATE	FINANCIAL INFORMATION	
	Defendant Laboratory Corporation of America	
	Total Charges	200.00
	Total Payments and Credits	200.00
	Balance Due as of 6/14/2017	**0.00**
	Plaintiff Davis, Patty	
	Total Charges	527.00
	Total Payments and Credits	527.00
	Balance Due as of 6/14/2017	**0.00**

Printed on 06/14/2017 at 11:04 AM

Filing # 31433090 E-Filed 08/28/2015 10:35:02 AM

IN THE CIRCUIT COURT OF THE THIRTEENTH JUDICIAL CIRCUIT
IN AND FOR HILLSBOROUGH COUNTY, FLORIDA
CIVIL DIVISION

PATTY DAVIS,
on behalf of herself and others
similarly situated,

Plaintiff,

v.

LABORATORY CORPORATION OF AMERICA, and LABORATORY CORPORATION OF AMERICA HOLDINGS,

Defendants,
_____/

Case No.:

CLASS REPRESENTATION

CLASS ACTION COMPLAINT

Plaintiff, PATTY DAVIS, an individual consumer, on behalf of herself and others similarly situated, and sues Defendants, LABORATORY CORPORATION OF AMERICA AND LABORATORY CORPORATION OF AMERICA HOLDINGS (collectively, "Defendants" or "LabCorp") for violations of the Florida Consumer Collection Practices Act ("FCCPA") and alleges as follows:

PARTIES, JURISDICTION & VENUE

1. This is a class action for declaratory, injunctive and monetary relief in excess of $15,000.00.

2. At all times material, Plaintiff is and was a resident of the State of Florida, residing in Brandon, Hillsborough County, Florida. Plaintiff is a "consumer" as that term is defined by the FCCPA.

08/28/2015 10:35 AM Electronically Filed: Hillsborough County/13th Judicial Circuit Page 1

3. The LabCorp Defendants are foreign corporations, incorporated under the laws of North Carolina. LabCorp regularly provides medical services in Hillsborough County and throughout the State of Florida. As more fully set out below, LabCorp is a "creditor" as that term is defined by the FCCPA.

4. LabCorp's violations of the FCCPA occurred in Hillsborough County, Florida, thereby conferring jurisdiction on the Circuit Court of the Thirteenth Judicial Circuit, in and for Hillsborough County pursuant to Florida Statutes section 559.77.

5. The money LabCorp attempted to collect from Plaintiff constitutes a "debt" as defined by the FCCPA.

6. Any necessary conditions precedent to the bringing of this action have either occurred or have been excused by the Defendants.

NATURE OF THE CASE

7. This is a class action against LabCorp seeking redress for routine and systematic violations of the Florida Consumer Collection Practices Act, Chapter 559, Florida Statutes ("FCCPA"), which prohibits collectors of debts, including creditors such as LabCorp, from engaging in abusive, deceptive or unfair debt collection practices.

8. Florida's workers compensation statutes prohibit medical providers from collecting or receiving payment from workers that are injured in the course and scope of their employment. Injured employees are thus not liable for payment of these medical services. Providers attempting to collect payment from any injured worker in violation of this protection also violate the FCCPA, which prohibits creditors from claiming, attempting or threatening to enforce any debt that is not legitimate.

08/28/2015 10:35 AM Electronically Filed: Hillsborough County/13th Judicial Circuit Page 2

9. LabCorp routinely and systematically attempts to collect payment for medical services from injured workers in violation of the FCCPA, often for amounts that exceed the Workers' Compensation Fee Schedules.

10. Plaintiff brings this class action on behalf of all injured employees in the State of Florida who, within the two years preceding this action, were unlawfully billed by LabCorp for medical services provided in connection with their work- related injuries in violation of the Workers' Compensation Statutes and the FCCPA pursuant to the course of conduct described herein.

FACTUAL ALLEGATIONS PERTAINING TO THE NAMED PLAINTIFF

11. On or about December 13, 2013 Plaintiff suffered an accident in the course and scope of her employment. As a result, Plaintiff was entitled to workers' compensation benefits for injuries related to this accident, including medical care and treatment, pursuant to Florida Statutes Chapter 440.

12. Section 440.13(13), Florida Statutes directs the statutory standards for payment of fees which are associated with the medical care and treatment received by the injured worker, and specifically prohibits health care providers from collecting or receiving a fee from an injured worker as follows:

> (a) Except for emergency care treatment, fees for medical services are payable only to a health care provider authorized to render remedial treatment, care, or attendance under this chapter. Carriers shall pay, disallow, or deny payment to health care providers in the manner and at times set forth in this chapter. **A health care provider may not collect or receive a fee from an injured employee within this state,** except as otherwise provided by this chapter. **Such providers have recourse against the employer or carrier for payment for services rendered in accordance with this chapter. Payment to health care providers or physicians shall be subject to the medical fee schedule and applicable**

08/28/2015 10:35 AM Electronically Filed: Hillsborough County/13th Judicial Circuit Page 3

> **practice parameters and protocols**, regardless of whether the health care provider or claimant is asserting that the payment should be made.

13. On or about February 6, 2014, LabCorp provided medical services to Plaintiff in the course and treatment for her work injury. The tests performed by LabCorp were done at the request of the Orthopedic Group of Tampa, one of the Plaintiffs' treating providers. Orthopedic Group of Tampa properly billed and received payment for its services from the workers' compensation carrier.

14. On or about May 8, 2014, LabCorp sent a bill for its services to Plaintiff, a copy of which is attached as Exhibit "A" in violation of the Workers Compensation statutes and the FCCPA. The LabCorp invoice indicates as follows:

> **INSURANCE HAS BEEN BILLED. TO DATE, NO RECORD OF PAYMENT OR RESPONSE FROM THEM HAS BEEN RECEIVED. THIS BILL IS NOW THE PATIENT'S RESPONSIBILITY. PLEASE REMIT PROMPT PAYMENT.**

15. By the time LabCorp billed Plaintiff for medical services it had already submitted its bill to Commercial Risk Management, the workers' compensation carrier for Plaintiff's employer. LabCorp billed Plaintiff with knowledge that Plaintiffs' injuries were work related, and that it was prohibited by law from billing or receiving payment from Plaintiff.

16. On or about August 1, 2014, Commercial Risk Management advised LabCorp to re-submit its bill for services on the proper form, upon which it would receive payment for its services. Commercial Risk Management provided a copy of this notice to the State of Florida. A copy of these documents is attached as Exhibit "B".

08/28/2015 10:35 AM Electronically Filed: Hillsborough County/13th Judicial Circuit Page 4

17. Also on August 1, 2014, Commercial Risk Management notified LabCorp to re-submit its bill for services to the carrier on the proper form and specifically admonished LabCorp to not attempt to contact or bill Plaintiff for medical services. A copy of this letter is attached as Exhibit "C". Specifically, the letter advised LabCorp as follows:

> **Please be further advised that the Workers' Compensation Law precludes the patient from being contacted by you, except for employer/carrier information.**
>
> **PLEASE DO NOT BILL THE PATIENT, THIS IS IN VIOLATION OF THE WORKERS' COMPENSATION LAW!!!**

18. Once again, however, in willful violation of the Workers' Compensation Statutes and the FCCPA, on September 2, 2014, LabCorp sent another bill to Plaintiff through LCA Collections, an in-house division of LabCorp. A copy of this bill is attached as Exhibit "D". This bill contained the following threatening and harassing warnings directed to Plaintiff:

> **YOUR IMMEDIATE PAYMENT REQUIRED**
>
> **We provided you professional diagnostic services that remain unpaid. Our records indicate that your account still remains outstanding.**
>
> **We have sent you several statements regarding this outstanding payment obligation. Regretfully, unless this office receives payment in full, escalated recovery steps will be taken. Be advised, LabCorp reserves the right to report unpaid debt(s) to a credit bureau(s).**
>
> **This is a serious matter you should no longer ignore. You must act now to clear your delinquent credit status. There is no longer any justification for not resolving your account. Call 1-800-845-6`67 immediately to resolve this account.**
>
> **Act immediately.**

08/28/2015 10:35 AM Electronically Filed: Hillsborough County/13th Judicial Circuit Page 5

19. The debt LabCorp has attempted to collect from Plaintiff was not valid as a matter of statute and is not a legitimate debt of Plaintiff. Plaintiff is not liable per statute for payment for the medical care and treatment, which was provided by Defendant to Plaintiff. *See* section 440.13(3)(g), Florida Statutes; Bergstein v. Palm Beach County School Board, 97 So.3d 878 (Fla. 1st DCA 2012); Bryan LGH Medical Center v. Florida Beauty Flora, Inc., 36 So.3d 795 (Fla. 1st DCA 2010); Avalon Center v. Hardaway, 967 So.2d 28 (Fla. 1st DCA 2007).

20. At all times, LabCorp knew that the amount it willfully sought to collect from Plaintiff was improper, and that the amount sought to be collected by Defendant from Plaintiff exceeded the Workers' Compensation Fee Schedule

21. LabCorp intentionally, willfully, and with full malice harassed, annoyed, and otherwise tried to cause Plaintiff to do something contrary to Plaintiff's interest, such as to pay the illegitimate consumer debt. This misconduct on the part of the Defendant has caused actual damages including but not limited to the cost of hiring a lawyer to defend the unlawful collection efforts and damage to Plaintiffs' credit reputation.

CLASS ACTION AND CLASS REPRESENTATION ALLEGATIONS

22. The causes of action alleged and the relief sought are appropriate for class action treatment and class certification pursuant to the governing and applicable rules of civil procedure, including Florida Rule of Civil Procedure 1.220(b)(2), (b)(3), and/or (c)(4).

23. This action is uniquely appropriate as a class action pursuant to Rule 1.220 (b)(2), Fla. R. Civ. P. because Plaintiff seeks declaratory, injunctive, and monetary relief for the entire Class, the entitlement to which will turn on application of state statute that

08/28/2015 10:35 AM Electronically Filed: Hillsborough County/13th Judicial Circuit Page 6

provides for recovery of statutory damages. Under these circumstances, the prosecution of separate actions by individual Class Members against the Defendants would create a risk of inconsistent or varying adjudications with respect to individual members of the Class which would in turn establish incompatible standards of conduct for the Defendant. This action is also appropriate for class certification under Rule 1.220(b)(3) because the questions of law and fact common to the Plaintiff and the Class far more than predominate over issues affecting individual members of the Class and resolution of these issues within a class action is the superior method to achieve fair and efficient adjudication of this controversy.

24. Plaintiff is a member of the Class described in 26 below and properly alleges these claims on its own behalf and on behalf of the Class Members who are similarly situated, against the Defendants.

25. The members of the Class are readily identifiable from documents maintained by LabCorp, thus permitting any appropriate notice to the Class and convenient case management by the Court.

26. The Plaintiff properly alleges the causes of action below on its own behalf and on behalf of a Class comprised of all injured employees in the State of Florida who, within the two years preceding this action, were unlawfully billed by LabCorp for medical services provided in connection with work- related injuries.

NUMEROSITY

27. The precise number of Class Members is presently unknown to Plaintiff. However, research of publicly available information and other information available to the Plaintiff suggests that LabCorp is an American S&P 500 company that is a market

08/28/2015 10:35 AM Electronically Filed: Hillsborough County/13th Judicial Circuit Page 7

leader in medical testing. LabCorp operates in more than 80 cities in Florida, including multiple locations in many cities. It is expected that the number of Class members will total in the hundreds, if not thousands. On information and belief the number of Members in the Class alleged is, therefore, so numerous that joinder of individual Class Members is impracticable and inconsistent with the orderly and efficient administration of justice, and contrary to the public good. Joinder would also be contrary to the efficient use of scarce judicial resources, contrary to the public good and inconsistent with the orderly and efficient administration of civil justice between and among civil litigants. Discovery of LabCorp's records will establish the precise number of Class Members prior to certification.

COMMONALITY

28. The overriding claim presented by Plaintiff and the Class against the Defendants is founded on whether LabCorp's practice of billing injured workers for medical services rendered for work-related injuries violates the provisions of two Florida Statutes: section 440.13(13) (a), and 559.77. This overriding claim raises the following common issues of fact and law:

a) Whether section 440.13(13)(a) prohibits LabCorp from sending bills for medical services rendered to injured employees;

b) Whether medical bills for services rendered to injured employees are illegitimate debts within the meaning of FCCPA 559.72, and attempts of which to collect constitute a violation of the FCCPA for which a civil remedy exists;

c) The extent to which the nature and frequency and persistence of LabCorp's noncompliance with section 559.72 warrants additional statutory damages;

08/28/2015 10:35 AM Electronically Filed: Hillsborough County/13th Judicial Circuit Page 8

d) The extent to which LabCorp's noncompliance with the FCCPA was intentional;

e) Whether an award of punitive damages is appropriate;

d) Whether injunctive and other equitable relief is necessary or proper.

29. The questions of fact and law that are common to the Plaintiff and all Class Members predominate over any questions pertaining to any individual class members. The monetary relief sought by Plaintiff and the Class includes statutory damages to be established by the Court in light of objective information concerning LabCorp's conduct. Actual damages will include fixed sums certain, readily susceptible of objective, arithmetic determination, including but not limited to payments made on illegitimate bills and attorneys fees incurred to defend illegitimate collection efforts. The wrongs alleged, the right to bring the instant complaint and cause of action, and the remedies sought are all common to the class.

30. With respect to any class to be certified under Rule 1.220(b)(2), the injunctive and declaratory relief sought herein predominates over the monetary relief, which flows naturally from the equitable relief sought herein.

TYPICALITY

31. The claims asserted herein by Plaintiff are typical of the claims possessed by each Class Member and are capable of being asserted by each Class Member against the Defendants. Specifically, like the Plaintiff, each Member of the Class was ainjured worker from whom LabCorp attempted to collect money for medical services rendered in connection with a work-related injury. Each Plaintiff and each Class Member is entitled

08/28/2015 10:35 AM Electronically Filed: Hillsborough County/13th Judicial Circuit Page 9

to statutory damages to be established by the Court in light of the egregious nature of LabCorp's conduct. Plaintiff and each Class Member are entitled to a declaration LabCorp's conduct violates sections 440.13 (13) and 559.72, as well as to an injunction permanently enjoining the LabCorp from unlawfully billing injured workers in the future.

32. The named Plaintiff is a Member of the Class it seeks to represent. The named Plaintiff's claim is typical of the claims of the Class. Specifically, the proof required of the named Plaintiff to prevail in this action is the same as would be required of each absent Class Member.

FAIR AND ADEQUATE REPRESENTATION OF THE CLASS

33. The named Plaintiff has a true stake in this case and will fairly and adequately represent, protect and prosecute the interests of each Class Member and likewise has the willingness and capacity to do so. The named Plaintiff participated in proceedings related to her workers' compensation claim and is familiar with the issues asserted herein. The named Plaintiff is capable of fairly representing itself and the Class Members who have been similarly impacted. Furthermore Plaintiff has engaged competent counsel knowledgeable in the areas workers' compensation law, the FCCPA and class action litigation. Plaintiff has no interests actually or potentially adverse to those of the putative Class Members. By vigorous prosecution of the individual claims, the named Plaintiff will also ensure the same degree of prosecution of the commonly held claims of the Class Members.

34. Plaintiff is a member of the Class described in paragraph 26 above and properly alleges these claims on its own behalf and on behalf of the Class Members who are similarly situated, against the Defendants.

08/28/2015 10:35 AM Electronically Filed: Hillsborough County/13th Judicial Circuit Page 10

35. The members of the Class and both Defendants are readily identifiable from publicly available data, thus permitting any appropriate notice to the Class and convenient case management by the Court.

COUNT I

DECLARATORY AND INJUNCTIVE RELIEF

36. Plaintiff re-alleges and incorporates herein Paragraphs 1 through 35, as if set forth fully herein.

37. This is an action for declaratory relief pursuant to Chapter 86, Fla. Stat. (2014).

38. Plaintiff, for herself and on behalf of the Class, alleges that there exists a *bonafide*, actual, present, and practical need for a declaration as to the rights of the partiespursuant to Florida Statute, Section 559.77(2), and seeks a declaration that LabCorp's practice of billing injured employees for medical services violates the Workers' Compensation Statutes and the Florida Consumer Collection Practices Act; and further requests an injunction against such further practices by LabCorp.

39. This Court has jurisdiction to issue a declaration as to the legality of the complained-of conduct, under Florida's Declaratory Judgment Act, Chapter 86, Florida Statutes, the Workers' Compensation Statutes and Section 559.77(2) of the Florida Consumer Collection Practices Act.

40. By virtue of the facts recited above, an actual, justiciable controversy exists between the parties relating to their legal rights and duties stemming from LabCorp's practice of billing injured employees.

08/28/2015 10:35 AM Electronically Filed: Hillsborough County/13th Judicial Circuit Page 11

41. For the protection of Florida's residents and injured employeeswho may be subject to the same improper debt collection practices in the future, injunctive relief preventing additional instances of the same conduct is required.

WHEREFORE, Plaintiff respectfully requests the following relief againstLabCorp for itself and Class Members:

a. A declaration finding that LabCorp's efforts to bill injured employees for medical services violate the Workers' Compensation Statues and Florida Consumer Collection Practices Act;

b. Entry of an injunction against LabCorp from further engaging in the same debt collection activities in violation of the Florida Consumer Collection Practices Act;

c. An award of costs and attorneys' fees made necessary by seeking this relief; and\any other such relief the Court may deem just and proper,and further demands a trial by jury of all issues so triable.

COUNT II

DAMAGES FOR VIOLATIONS OF FLORIDA STATUTE § 559.72(9)

42. Plaintiff re-alleges paragraphs one through 35, as if fully restated herein.

43. LabCorp is subject to, and has violated the provisions of Florida Statutes sections 442.13 (13), and 559.72(9) by attempting to collect payment from injured employees for medical services rendered in connection with work-related injuries through the assertion of the existence of a legal right with knowledge that such right does not exist.

44. LabCorp's assertions, made in an attempt to collect payment from Plaintiff

08/28/2015 10:35 AM Electronically Filed: Hillsborough County/13th Judicial Circuit Page 12

and the Class were knowingly false, deceptive and unlawfully limited Plaintiff and Class Members' rights under Florida law.

45. As a direct and proximate result of LabCorp's actions, Plaintiff and Class Members are entitled to statutory damages as defined by Florida Statute, Section 559.77, actual damages, and attorneys' fees and costs.

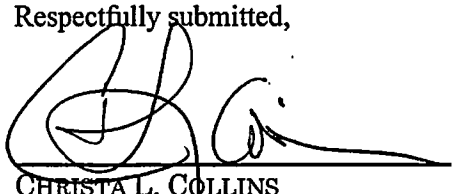
WHEREFORE, Plaintiff and Class Members respectfully request entry of judgment against LabCorp for:

a. Actual damages, where applicable

b. Statutory damages;

c. An award of costs and attorneys' fees made necessary by seeking this relief; and any other such relief the Court may deem just and proper, and further demands a trial by jury of all issues so triable.

Respectfully submitted,



CHRISTA L. COLLINS
Harmon, Woods, Parker & Abrunzo, P.A.
Florida Bar # 0381829
110 North 11th Street, 2nd Floor
Tampa, Florida
Telephone: (813) 864-1762
Facsimile: (813) 222-3616
Email: clc@harmonwoodslaw.com
Counsel for Plaintiff

08/28/2015 10:35 AM Electronically Filed: Hillsborough County/13th Judicial Circuit Page 13

LabCorp
Laboratory Corporation of America

Laboratory Bill

BALANCE NOW DUE

Payments made via an online banking service must include this invoice #

Invoice/Factura: 71932083

Amount Due: $133.00

TAX ID# : 84-0611484

PATTY DAVIS
922 N PARSONS AVE
BRANDON, FL 33510-3108

Patient Name: PATTY DAVIS
Invoice Date: 05/08/14 403721649650

Important Notice

INSURANCE HAS BEEN BILLED. TO DATE, NO RECORD OF PAYMENT OR RESPONSE FROM THEM HAS BEEN RECEIVED. THIS BILL IS NOW THE PATIENT'S RESPONSIBILITY. PLEASE REMIT PROMPT PAYMENT. THANK YOU.

Test requested by:
ORTHOPADIC MEDICAL GROUP-TAMPA
615 VONDERBURG DR
BRANDON, FL 33511

Summary of Activity

Date of Service	Description	Charges	Adjustments	Medicare/ Medicaid Paid	Insurance Paid	Patient Paid	You Pay
02/06/14	CBC/Diff Ambiguous Default	31.00					31.00
02/06/14	Comp. Metabolic Panel (14)	46.00					46.00
02/06/14	Urinalysis, Routine	31.00					31.00
02/06/14	Venipuncture	25.00					25.00
IMPORTANTE: Tenemos agentes bilingues disponibles para asistirle. Llamenos ahora para resolver su situation.		133.00					**$133.00**

LabCorp reserves the right to refuse laboratory services for failure to pay for past services. Only your doctor can answer questions regarding testing, diagnosis and results.

TEST PERFORMED BY: LABCORP TAMPA 5610 W LASALLE STREET TAMPA, FL 33607

We accept the following credit cards: DISCOVER VISA

Payment arrangements can be made with no additional fee by calling 1-800-845-6167 from 8am - 5pm, Monday - Friday, or visit labcorp.com/billing.

PATTY DAVIS
922 N PARSONS AVE
BRANDON, FL 33510-3108

Payments made via an online banking service must include
Invoice # 71932083

Return this portion with payment
DO NOT SEND CASH
Make check or money order payable to:

Laboratory Corporation of America Holdings
P.O. Box 2240
Burlington, North Carolina 27216-2240

Invoice/Factura: 71932083

Amount Due: $133.00

www.labcorp.com/billing
FAX: 1-866-227-2939

EXHIBIT
A
tabbies

SIVAD*YTTAP***** 40372164 9650**** 1 0133001

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS
OFFICE OF THE JUDGES OF COMPENSATION CLAIMS

Davis, Patty,

Employee/Claimant,

v.

JTS Enterprises, Inc. d/b/a Caspers Co.

Employer,

and

Commercial Risk Management

Carrier/Servicing Agent.
_____/

OJCC Case No.: 14-011180DEJ

Assigned Judge: Jenkins

Accident date: 12/30/2013

RESPONSE TO PETITION FOR BENEFITS

LOST TIME CASE: Yes	**MEDICAL BENEFITS CASE:** No
RESPONSE TO EACH BENEFIT REQUESTED: (If Denial of Benefit(s) was rescinded, include the initial indemnity start date, disability type, average weekly wage and compensation rate.) Petition(s) 07/29/2014(2) are covered by this response. Bill from Lab Corp for date of service 2/6/14 in the amount of $133.00 has been requested to be billed on the proper form. Once received billed properly, on the proper form, it will be processed for payment. No PICA due or owing. Carrier reserves the right to plead any and all other defenses that may become known.	
DENIAL OF BENEFIT WAS RESCINDED ON:	
CARRIER: COMMERCIAL RISK MANAGEMENT	**CARRIER'S CODE:** 6042 **CARRIER'S FILE NO.:** 80343764 **DATE PREPARED:** 8/1/2014
ADJUSTER: DENA MCKENZIE **TELEPHONE:** 813-289-3900 **EMAIL:** DMCKENZIE@CRM-SU.COM	**COPY FURNISHED:** PATTY DAVIS 922 NORTH PARSONS AVE., BRANDON, FL 33510 LAWRENCE ANZALONE, ESQ. 211 SOUTH FLORIDA AVE., LAKELAND, FL 33801 JIM SMITH, ESQ. FILE/JTS ENTERPRISES OF TAMPA LTD DBA CASPERS COMPANY

EXHIBIT
tabbies
B

OJCC Form RPFB (Revised 3-1-2007)

Filed August 1, 2014 8:40 AM ET Office of the Judges of Compensation Claims.
08/28/2015 10:35 AM Electronically Filed: Hillsborough County/13th Judicial Circuit Page 15

NOTICE: If you do not agree with the employer/carrier's action or you do not understand why you received this information, please contact your adjuster. For further assistance, please contact the Employee Assistance and Ombudsman Office at (800) 342-1741.

08/28/2015 10:35 AM Electronically Filed: Hillsborough County/13th Judicial Circuit Page 16

Commercial Risk Management, Inc.

Affiliate Southeastern Underwriters, Inc.
P.O. Box 18366 Tampa, Florida 33679-8366 Phone (813) 289-3900 Fax (813) 289-3771

August 01,2014

Laboratory Corp of Americal Holdings
P.O. Box 2240
Burlington, NC 27216-2240

RE: EMPLOYEE: DAVIS, PATTY
EMPLOYER: JTS ENTERPRISES OF TAMPA LTD DBA CASPERS COMPANY
DATE OF ACC: 12/30/2013
CLAIM #: 80343764
YOUR ACCT #: [redacted]
SVC DATE: 2/6/14

Dear Medical Provider:

As you are aware, hospitals and all medical providers are subject to the Florida Workers' Compensation Fee Schedule. Please resubmit your billing on the correct form (HCFA-1500 or UB-92) with medical reports. Your billing should be submitted to CRM, Inc. c/o Corvel Corp P.O. Box 23688, Tampa, FL 33623.

Please be further advised that the Workers' Compensation Law precludes the patient from being contacted by you, except for employer/carrier information.

PLEASE DO NOT BILL THE PATIENT, THIS IS IN VIOLATION OF THE WORKERS' COMPENSATION LAW!!! If you have any questions, contact the undersigned at the above listed number.

Sincerely,
Dena McKenzie

cc: PATTY DAVIS, 922 N. PARSON AVENUE, BRANDON, FL 33510
Lawrence Anzalone, Esq. 211 South Florida Ave., Lakeland, FL 33801
Jim Smith, Esq.

Attachment



LCA COLLECTIONS: PAST DUE

An In-House Division of Laboratory Corporation of America

TAX ID# : 84-0611484
403721649650

PATIENT: PATTY DAVIS
INVOICE DATE: 09/02/14

INVOICE/FACTURA	71932083
AMOUNT DUE	$133.00

Payments made via an online banking service must include this invoice number.

DATE OF SERVICE: 02/06/14
TEST REQUESTED BY: ORTHOPADIC MEDICAL GROUP-TAMPA

PATTY DAVIS
922 N PARSONS AVE
BRANDON, FL 33510-3108

Your Immediate Payment Required

We provided you professional diagnostic services that remain unpaid. Our records indicate that your account still remains outstanding.

We have sent you several statements regarding this outstanding payment obligation. Regretfully, unless this office receives payment in full, escalated recovery steps will be taken. Be advised, LabCorp reserves the right to report unpaid debt(s) to a credit bureau(s).

This is a serious matter you should no longer ignore. You must act now to clear your delinquent credit status. There is no longer any justification for not resolving your account. Call 1-800-845-6167 immediately to resolve this account.

Act immediately.

LabCorp reserves the right to refuse laboratory services for failure to pay for past services.

IMPORTANTE: Su cuenta esta vencida. Tenemos agentes bilingues disponibles para asistirle. Llamenos ahora para resolver su situacion.

** CALL 1-800-845-6167 BETWEEN 8:00AM - 5:00PM, MONDAY - FRIDAY **

FOR PROPER CREDIT, RETURN THIS PORTION WITH YOUR PAYMENT

922 N PARSONS AVE
BRANDON, FL 33510-3108

PLEASE DO NOT SEND CASH

MAKE CHECK OR MONEY ORDER PAYABLE TO:

LABORATORY CORPORATION OF AMERICA
P.O. BOX 2240
BURLINGTON, NORTH CAROLINA 27216-2240

TERMS PAYABLE ON RECEIPT

INVOICE/FACTURA
71932083
PAY THIS AMOUNT
$133.00

FOR: PATTY DAVIS

WEB PAYMENT OPTIONS ARE AVAILABLE AT:
www.labcorp.com/billing

ıyments made via an online banking
rvice must include invoice# 71932083

EXHIBIT
tabbies
D

SIVAD*YTTAP***** 40372164 9650**** 6 0133001

IN THE CIRCUIT COURT OF THE THIRTEENTH JUDICIAL CIRCUIT
IN AND FOR HILLSBOROUGH COUNTY, FLORIDA
CIVIL DIVISION

PATTY DAVIS, on behalf of herself and others similarly situated, Plaintiff, v. LABORATORY CORPORATION OF AMERICA and LABORATORY CORPORATION OF AMERICA HOLDINGS, Defendants.	Case No. 15-CA-007914

ANSWER AND AFFIRMATIVE DEFENSES

Pursuant to Fla. R. Civ. P. 1.110, Defendants Laboratory Corporation of America and Laboratory Corporation of America Holdings (collectively, "LabCorp"), by and through their undersigned counsel, hereby file this Answer in response to Plaintiff's Class Action Complaint (filed Aug. 28, 2015), and state as follows:

With respect to the preamble of the Complaint, no response is required. To the extent a response is required, LabCorp denies it violated the Florida Consumer Collection Practices Act ("FCCPA") and denies any liability.

LabCorp's responses to the specific numbered paragraphs of the Complaint are set forth in the paragraphs below with corresponding numbers.

PARTIES, JURISDICTION & VENUE

1. LabCorp admits that Plaintiff purports to bring this action as a class action and that she seeks declaratory, injunctive and monetary relief. LabCorp lacks sufficient knowledge

on which to admit or deny the remaining allegations of Paragraph 1, and therefore denies the same.

2. The second sentence of Paragraph 2 states legal conclusions to which no answer is required. To the extent an answer is required, the allegations of the second sentence of Paragraph 2 are denied. LabCorp lacks sufficient knowledge on which to admit or deny the remaining allegations of Paragraph 2, and therefore denies the same.

3. LabCorp admits that Laboratory Corporation of America and Laboratory Corporation of America Holdings are both foreign corporations. LabCorp denies that either entity is organized under the laws of North Carolina. LabCorp admits that it does business in Florida, including Hillsborough County. The remainder of Paragraph 3 states legal conclusions to which no answer is required and, to the extent a response is required, LabCorp denies the same.

4. LabCorp denies that it violated the FCCPA. The remainder of Paragraph 4 states legal conclusions to which no answer is required and, to the extent a response is required, LabCorp denies the same.

5. Paragraph 5 states legal conclusions to which no answer is required and, to the extent a response is required, LabCorp denies the same.

6. Paragraph 6 states legal conclusions to which no answer is required. To the extent a response is required, LabCorp denies having excused any condition precedent to the bringing of this action and states that it lacks sufficient knowledge on which to admit or deny the remaining allegations of Paragraph 6, and therefore denies the same.

10/19/2015 5:30 PM Electronically Filed: Hillsborough County/13th Judicial Circuit Page 2

NATURE OF THE CASE

7. Paragraph 7 purports to characterize the FCCPA, which speaks for itself. LabCorp denies any allegation which mischaracterizes the statute. Additionally, Paragraph 7 contains legal conclusions to which no answer is required. To the extent a response is required, Paragraph 7 is denied.

8. Paragraph 8 purports to characterize the FCCPA and Florida's workers compensation statutes, which speak for themselves. LabCorp denies any allegation which mischaracterizes the statutes. Additionally, Paragraph 8 contains legal conclusions to which no answer is required. To the extent a response is required, Paragraph 8 is denied.

9. LabCorp denies the allegations of Paragraph 9.

10. LabCorp admits that Plaintiff purports to bring this action as a class action. LabCorp denies violating the FCCPA and the remaining allegations of Paragraph 10.

FACTUAL ALLEGATIONS PERTAINING TO THE NAMED PLAINTIFF

11. LabCorp lacks sufficient knowledge on which to admit or deny the allegations of Paragraph 11, and therefore denies the same.

12. Paragraph 12 purports to characterize Florida's workers compensation statute, which speaks for itself. LabCorp denies any allegation which mischaracterizes the statute. Additionally, Paragraph 12 contains legal conclusions to which no answer is required. To the extent a response is required, Paragraph 12 is denied.

13. LabCorp admits that, on or about February 6, 2014, it provided services ordered by the Orthopedic Group of Tampa to Plaintiff. LabCorp lacks sufficient knowledge on which to admit or deny the remaining allegations of Paragraph 13, and therefore denies the same.

14. LabCorp admits that, on or about May 8, 2014, it issued an invoice to Plaintiff for the outstanding balance due for the services rendered to her on or about February 6, 2014. LabCorp further admits that a portion of that invoice is quoted in Paragraph 14. LabCorp denies violating the FCCPA and the remaining allegations of Paragraph 14.

15. LabCorp admits that, prior to May 8, 2014, it billed Commercial Risk Management for the services performed for Plaintiff on or about February 6, 2014. LabCorp denies the remaining allegations of Paragraph 15.

16. LabCorp admits that, until and after August 1, 2014, Commercial Risk Management denied payment for the services performed for Plaintiff. LabCorp lacks sufficient knowledge on which to admit or deny the remaining allegations of Paragraph 16, and therefore denies the same.

17. LabCorp admits that a form letter apparently on Commercial Risk Management, Inc. letterhead is attached to the complaint as Exhibit C and that Paragraph 17 quotes a portion of that letter. LabCorp lacks sufficient knowledge on which to admit or deny the remaining allegations of Paragraph 17, and therefore denies the same.

18. LabCorp admits that, on or about September 2, 2014, it issued an invoice to Plaintiff for the outstanding balance due for the services rendered to her on or about February 6, 2014. LabCorp further admits that a portion of that invoice is quoted in Paragraph 18. LabCorp denies violating the FCCPA and the remaining allegations of Paragraph 18.

19. Paragraph 19 states legal conclusions to which no answer is required and, to the extent a response is required, LabCorp denies the same.

20. LabCorp denies the allegations of Paragraph 20.

21. LabCorp denies the allegations of Paragraph 21.

10/19/2015 5:30 PM Electronically Filed: Hillsborough County/13th Judicial Circuit Page 4

CLASS ACTION AND CLASS REPRESENTATION ALLEGATIONS

22. Paragraph 22 states legal conclusions to which no answer is required and, to the extent a response is required, LabCorp denies the same.

23. Paragraph 23 states legal conclusions to which no answer is required and, to the extent a response is required, LabCorp denies the same.

24. LabCorp admits that Plaintiff purports to be a member of her putative class and that Plaintiff purports to bring this action as a class action. The remainder of Paragraph 24 states legal conclusions to which no answer is required and, to the extent a response is required, LabCorp denies the same.

25. LabCorp denies the allegations of Paragraph 25.

26. LabCorp admits that Plaintiff purports to bring this action as a class action, but denies any liability and denies that this case is appropriate for class treatment.

NUMEROSITY

27. The first sentence of Paragraph 27 states Plaintiff's state of mind. LabCorp lacks sufficient knowledge on which to admit or deny the allegations of the first sentence of Paragraph 27, and therefore denies the same. LabCorp admits that Plaintiff purports to be a member of her putative class and that Plaintiff purports to bring this action as a class action. LabCorp admits that stock issued by Laboratory Corporation of America Holdings is one of the stocks comprising the Standard & Poor's 500 stock market index. LabCorp admits that it operates more than 80 patient service centers in the state of Florida. The remainder of Paragraph 27 states legal conclusions to which no answer is required and, to the extent a response is required LabCorp denies the same.

10/19/2015 5:30 PM Electronically Filed: Hillsborough County/13th Judicial Circuit Page 5

COMMONALITY

28. Paragraph 28 states legal conclusions to which no answer is required and, to the extent a response is required, LabCorp denies the same.

29. Paragraph 29 states legal conclusions to which no answer is required and, to the extent a response is required, LabCorp denies the same.

30. Paragraph 30 states legal conclusions to which no answer is required and, to the extent a response is required, LabCorp denies the same.

TYPICALITY

31. Paragraph 31 states legal conclusions to which no answer is required and, to the extent a response is required, LabCorp denies the same.

32. LabCorp admits that Plaintiff purports to be a member of her proposed class. The remainder of Paragraph 32 states legal conclusions to which no answer is required and, to the extent a response is required, LabCorp denies the same.

FAIR AND ADEQUATE REPRESENTATION OF THE CLASS

33. Paragraph 33 states legal conclusions to which no answer is required and, to the extent a response is required, LabCorp lacks sufficient knowledge on which to admit or deny the allegations of Paragraph 33, and therefore denies the same.

34. LabCorp admits that Plaintiff purports to be a member of her proposed class and that Plaintiff purports to bring this action as a class action, but denies that Plaintiff is entitled to bring this action as a class action and denies that this case is appropriate for class treatment.

35. LabCorp denies the allegations of Paragraph 35.

COUNT I

DECLARATORY AND INJUNCTIVE RELIEF

36. LabCorp incorporates its answers to Paragraphs one through 35.

37. Paragraph 37 states legal conclusions to which no answer is required and, to the extent a response is required, LabCorp denies the same.

38. Paragraph 38 states legal conclusions to which no answer is required and, to the extent a response is required, LabCorp denies the same.

39. Paragraph 39 states legal conclusions to which no answer is required and, to the extent a response is required, LabCorp denies the same.

40. Paragraph 40 states legal conclusions to which no answer is required and, to the extent a response is required, LabCorp denies the same.

41. LabCorp denies the allegations of Paragraph 41.

"WHEREFORE" CLAUSE

LabCorp denies that Plaintiff is entitled to any of the relief demanded.

COUNT II

DAMAGES FOR VIOLATIONS OF FLORIDA STATUTE § 559.72(9)

42. LabCorp incorporates its answers to Paragraphs one through 35.

43. Paragraph 43 states legal conclusions to which no answer is required. LabCorp denies that it violated Florida's workers compensation statutes or the FCCPA and, to the extent that further response is required, LabCorp denies the remaining allegations of Paragraph 43.

44. LabCorp denies the allegations of Paragraph 44.

45. LabCorp denies the allegations of Paragraph 45.

10/19/2015 5:30 PM Electronically Filed: Hillsborough County/13th Judicial Circuit Page 7

"WHEREFORE" CLAUSE

LabCorp denies that Plaintiff is entitled to any of the relief demanded.

AFFIRMATIVE DEFENSES

LabCorp sets forth its Affirmative Defenses below. By setting forth these Affirmative Defenses, LabCorp does not assume the burden of proof as to any fact, issue, or element of a cause of action where that burden rests with Plaintiff. Each of the following defenses is asserted against Plaintiff's claim as well as any claims of putative class members. Nothing stated herein is intended or shall be construed as an acknowledgment that a particular issue or subject matter is relevant to Plaintiff's allegations.

FIRST DEFENSE

LabCorp lacked actual knowledge that Ms. Davis was not liable for the debt it attempted to collect from her and at all times acted in good faith with reasonable grounds to believe that the debt was legitimate and its actions did not violate any applicable laws. Before attempting to collect payment from Ms. Davis, LabCorp attempted to collect payment for the services provided to Ms. Davis from the entity identified by Ms. Davis as her workers compensation insurance carrier, Commercial Risk Management, Inc. Commercial Risk Management, Inc. refused payment for Ms. Davis' services. Based on the refusal from Ms. Davis's claimed workers compensation insurance carrier, LabCorp could not have known that Ms. Davis was an injured employee within the meaning of Section 440.13(13), Florida Statutes.

SECOND DEFENSE

If LabCorp attempted to collect from Ms. Davis a debt for which she was not liable, such collection attempt was not intentional and resulted from a bona fide error, notwithstanding LabCorp's maintenance of procedures reasonably adapted to avoid such error. LabCorp

incorporates herein its First Defense and states that it utilizes billing practices and procedures designed to operate in compliance with applicable legal requirements, including the FCCPA.

THIRD DEFENSE

Plaintiff's class allegations fail because LabCorp has no liability to plaintiff, and plaintiff therefore lacks standing to act as class representative of the purported class.

FOURTH DEFENSE

Plaintiff's claims fail, in whole or in part, because Plaintiff has suffered no damages or actual loss. Plaintiff seeks to assert claims for which neither she nor anyone else suffered recoverable damages of any kind.

FIFTH DEFENSE

Plaintiff has failed to mitigate damages, if any. To the extent that Plaintiff has any recoverable damages, recovery is limited or barred by her failure to mitigate such damages.

SIXTH DEFENSE

Plaintiff is responsible for part or all of her damages, if any, under the doctrine of comparative negligence. To the extent that Plaintiff has any recoverable damages, she contributed to their occurrence.

SEVENTH DEFENSE

Any purported damages to Plaintiff, which LabCorp denies, were not proximately caused by any acts or omissions of LabCorp and are the result of acts or omissions of third parties. To the extent that Plaintiff has any recoverable damages, such damages were not caused by and are not recoverable from LabCorp.

EIGHTH DEFENSE

Plaintiff is not entitled to attorneys' fees. LabCorp at all times acted in good faith, under the reasonable belief that the debt was legitimate and that its conduct did not violate any laws. LabCorp did not recklessly, knowingly, intentionally or willfully violate the FCCPA and is not liable to Plaintiff for his attorneys' fees.

NINTH DEFENSE

Plaintiff is not entitled to injunctive or other equitable relief. LabCorp at all times acted in good faith, under the reasonable belief that the debt was legitimate and that its conduct did not violate any laws. LabCorp did not recklessly, knowingly, intentionally or willfully violate FCCPA and no form of injunctive or equitable relief would be appropriate in this case.

RESERVATION OF DEFENSES

LabCorp reserves and asserts all Affirmative Defenses available under any applicable law. The facts not having been fully developed, LabCorp reserves the right to raise additional defenses not asserted herein of which it may become aware through discovery and the factual development of this case.

Dated: October 19, 2015

Respectfully submitted,

/s/ Carol A. Licko

Carol A. Licko
Florida Bar No. 435872
carol.licko@hoganlovells.com
James L. VanLandingham
Florida Bar No. 106761
james.vanlandingham@hoganlovells.com
HOGAN LOVELLS US LLP
600 Brickell Avenue, Suite 2700
Miami, FL 33131
Tel: (305) 459-6500
Fax: (305) 459-6550

Steven F. Barley (*pro hac vice forthcoming*)
Elisabeth S. Walden (*pro hac vice forthcoming*)
HOGAN LOVELLS US LLP
100 International Drive, Suite 2000
Baltimore, MD 21202
Tel: (410) 659-2700
Fax: (410) 659-2701
steve.barley@hoganlovells.com
elisabeth.walden@hoganlovells.com

Counsel for Defendants Laboratory Corporation of America and Laboratory Corporation of America Holdings

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on October 19, 2015, I filed the foregoing Answer via the Florida E-Filing Portal, which will serve an electronic copy of same to counsel for plaintiff, Christa L. Collins, Esq., Harmon, Woods, Parker & Abrunzo, P.A., clc@harmonwoodslaw.com.

/s/Carol A. Licko

IN THE CIRCUIT COURT OF THE THIRTEENTH JUDICIAL CIRCUIT
IN AND FOR HILLSBOROUGH COUNTY, FLORIDA
CIVIL DIVISION

PATTY DAVIS, on behalf of herself and others similarly situated,

Plaintiff,

v.

LABORATORY CORPORATION OF AMERICA and LABORATORY CORPORATION OF AMERICA HOLDINGS,

Defendants.

_____/

CASE NO.: 15-CA-007914

VERIFIED MOTION FOR ADMISSION TO APPEAR PRO HAC VICE OF ELISABETH S. WALDEN PURSUANT TO FLORIDA RULE OF JUDICIAL ADMINISTRATION 2.510

COMES NOW Elisabeth S. Walden, Movant herein, and respectfully represents the following:

1. Movant resides in Baltimore, Maryland. Movant is not a resident of the State of Florida.

2. Movant is an attorney and a member of the law firm of Hogan Lovells US LLP, with offices at 100 International Drive, Suite 2000, Baltimore, Maryland 21202.

3. Movant has been retained personally or as a member of the above-named law firm on September 8, 2015 by defendants Laboratory Corporation of America and Laboratory Corporation of America Holdings (collectively, "LabCorp"), to provide legal representation in the above-styled matter now pending before the Court.

4. Movant is an active member in good standing and is currently eligible to practice law in the following jurisdictions:

Jurisdiction	Attorney/Bar Number
Maryland	N/A
District of Columbia	986709

5. There are no disciplinary proceedings pending against Movant.

6. Within the past five (5) years, Movant has not been subject to any disciplinary proceedings.

7. Movant has never been subject to any suspension proceedings.

8. Movant has never been subject to any disbarment proceedings.

9. Movant, either by resignation, withdrawal, or otherwise, never has terminated or attempted to terminate Movant's office as an attorney in order to avoid administrative, disciplinary, disbarment, or suspension proceedings.

10. Movant is not an inactive member of The Florida Bar.

11. Movant is not now a member of The Florida Bar.

12. Movant is not a suspended member of The Florida Bar.

13. Movant is not a disbarred member of The Florida Bar nor has Movant received a disciplinary resignation from The Florida Bar.

14. Movant has not previously been disciplined or held in contempt by reason of misconduct committed while engaged in representation pursuant to Florida Rule of Judicial Administration 2.510.

15. Movant has not filed any motions to appear as counsel in Florida state courts, during the past five (5) years.

10/22/2015 12:44 PM Electronically Filed: Hillsborough County/13th Judicial Circuit Page 2

16. Local counsel of record associated with Movant in this matter is Carol A. Licko, Florida Bar No. 435872, who is an active member in good standing of The Florida Bar and has offices at 600 Brickell Avenue, Suite 2700, Miami, Florida 33131.

17. Movant has read the applicable provisions of Florida Rule of Judicial Administration 2.510 and Rule 1-3.10 of the Rules Regulating The Florida Bar and certifies that this verified motion complies with those rules.

18. Movant agrees to comply with the provisions of the Florida Rules of Professional Conduct and consents to the jurisdiction of the courts and the Bar of the State of Florida.

WHEREFORE, Movant respectfully requests permission to appear in this court for this cause only.

DATED this 16th day of October, 2015.

Respectfully submitted,

HOGAN LOVELLS US LLP

By _____

Elisabeth S. Walden
elisabeth.walden@hoganlovells.com
100 International Drive
Suite 2000
Baltimore, MD 21202
(410) 659-2700
(410) 659-2701 - facsimile

Counsel for Defendants

10/22/2015 12:44 PM Electronically Filed: Hillsborough County/13th Judicial Circuit Page 3

STATE OF MARYLAND

COUNTY OF BALTIMORE

I, Elisabeth S. Walden, do hereby swear or affirm under penalty of perjury that I am the Movant in the above-styled matter; that I have read the foregoing Motion and know the contents thereof, and the contents are true of my own knowledge and belief.

Elisabeth S. Walden

I HEREBY consent to be associated as local counsel of record in this cause pursuant to Florida Rule of Judicial Administration 2.510.

DATED this 22nd day of October, 2015.

By /s/ Carol A. Licko

Carol A. Licko
Florida Bar No. 435872
carol.licko@hoganlovells.com
HOGAN LOVELLS US LLP
600 Brickell Avenue
Suite 2700
Miami, FL 33131
Tel: (305) 459-6500
Fax: (305) 459-6550

10/22/2015 12:44 PM Electronically Filed: Hillsborough County/13th Judicial Circuit Page 4

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing motion was served by mail to PHV Admissions, The Florida Bar, 651 East Jefferson Street, Tallahassee, Florida 32399-2333, accompanied by payment of the $250.00 filing fee made payable to The Florida Bar; and filed via the Florida E-Filing Portal, which will serve an electronic copy of same to counsel for Plaintiff, Christa L. Collins, Esq., Harmon, Woods, Parker & Abrunzo, P.A., clc@harmonwoodslaw.com, on this 22nd day of October, 2015.

/s/ Carol A. Licko

10/22/2015 12:44 PM Electronically Filed: Hillsborough County/13th Judicial Circuit Page 5

IN THE CIRCUIT COURT OF THE THIRTEENTH JUDICIAL CIRCUIT
IN AND FOR HILLSBOROUGH COUNTY, FLORIDA
CIVIL DIVISION

PATTY DAVIS, on behalf of herself and others similarly situated,

Plaintiff,

v.

LABORATORY CORPORATION OF AMERICA and LABORATORY CORPORATION OF AMERICA HOLDINGS,

Defendants.

_____/

CASE NO.: 15-CA-007914

VERIFIED MOTION FOR ADMISSION TO APPEAR PRO HAC VICE OF STEVEN F. BARLEY PURSUANT TO FLORIDA RULE OF JUDICIAL ADMINISTRATION 2.510

COMES NOW Steven F. Barley, Movant herein, and respectfully represents the following:

1. Movant resides in Baltimore, Maryland. Movant is not a resident of the State of Florida.

2. Movant is an attorney and a member of the law firm of Hogan Lovells US LLP, with offices at 100 International Drive, Suite 2000, Baltimore, Maryland 21202.

3. Movant has been retained personally or as a member of the above-named law firm on September 8, 2015 by defendants Laboratory Corporation of America and Laboratory Corporation of America Holdings (collectively, "LabCorp"), to provide legal representation in the above-styled matter now pending before the Court.

4. Movant is an active member in good standing and is currently eligible to practice law in the following jurisdictions:

Jurisdiction	Attorney/Bar Number
Maryland	N/A

5. There are no disciplinary proceedings pending against Movant.

6. Within the past five (5) years, Movant has not been subject to any disciplinary proceedings.

7. Movant has never been subject to any suspension proceedings.

8. Movant has never been subject to any disbarment proceedings.

9. Movant, either by resignation, withdrawal, or otherwise, never has terminated or attempted to terminate Movant's office as an attorney in order to avoid administrative, disciplinary, disbarment, or suspension proceedings.

10. Movant is not an inactive member of The Florida Bar.

11. Movant is not now a member of The Florida Bar.

12. Movant is not a suspended member of The Florida Bar.

13. Movant is not a disbarred member of The Florida Bar nor has Movant received a disciplinary resignation from The Florida Bar.

14. Movant has not previously been disciplined or held in contempt by reason of misconduct committed while engaged in representation pursuant to Florida Rule of Judicial Administration 2.510.

15. Movant has not filed any motions to appear as counsel in Florida state courts, during the past five (5) years.

10/22/2015 12:42 PM Electronically Filed: Hillsborough County/13th Judicial Circuit Page 2

16. Local counsel of record associated with Movant in this matter is Carol A. Licko, Florida Bar No. 435872, who is an active member in good standing of The Florida Bar and has offices at 600 Brickell Avenue, Suite 2700, Miami, Florida 33131.

17. Movant has read the applicable provisions of Florida Rule of Judicial Administration 2.510 and Rule 1-3.10 of the Rules Regulating The Florida Bar and certifies that this verified motion complies with those rules.

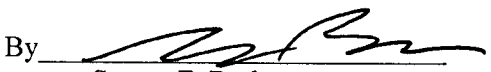
18. Movant agrees to comply with the provisions of the Florida Rules of Professional Conduct and consents to the jurisdiction of the courts and the Bar of the State of Florida.

WHEREFORE, Movant respectfully requests permission to appear in this court for this cause only.

DATED this 19th day of October, 2015.

Respectfully submitted,

HOGAN LOVELLS US LLP

By 

Steven F. Barley
steve.barley@hoganlovells.com
100 International Drive
Suite 2000
Baltimore, MD 21202
(410) 659-2700
(410) 659-2701 - facsimile

Counsel for Defendants

10/22/2015 12:42 PM Electronically Filed: Hillsborough County/13th Judicial Circuit Page 3

STATE OF MARYLAND

COUNTY OF BALTIMORE

I, Steven F. Barley, do hereby swear or affirm under penalty of perjury that I am the Movant in the above-styled matter; that I have read the foregoing Motion and know the contents thereof, and the contents are true of my own knowledge and belief.

Steven F. Barley

I HEREBY consent to be associated as local counsel of record in this cause pursuant to Florida Rule of Judicial Administration 2.510.

DATED this 22nd day of October, 2015.

By /s/ Carol A. Licko

Carol A. Licko
Florida Bar No. 435872
carol.licko@hoganlovells.com
HOGAN LOVELLS US LLP
600 Brickell Avenue
Suite 2700
Miami, FL 33131
Tel: (305) 459-6500
Fax: (305) 459-6550

10/22/2015 12:42 PM Electronically Filed: Hillsborough County/13th Judicial Circuit Page 4

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing motion was served by mail to PHV Admissions, The Florida Bar, 651 East Jefferson Street, Tallahassee, Florida 32399-2333, accompanied by payment of the $250.00 filing fee made payable to The Florida Bar; and filed via the Florida E-Filing Portal, which will serve an electronic copy of same to counsel for Plaintiff, Christa L. Collins, Esq., Harmon, Woods, Parker & Abrunzo, P.A., clc@harmonwoodslaw.com on this 22nd day of October, 2015.

/s/ Carol A. Licko

10/22/2015 12:42 PM Electronically Filed: Hillsborough County/13th Judicial Circuit Page 5

IN THE CIRCUIT COURT OF THE THIRTEENTH JUDICIAL CIRCUIT
IN AND FOR HILLSBOROUGH COUNTY, FLORIDA
CIVIL DIVISION

PATTY DAVIS, on behalf of herself and others similarly situated, Plaintiff, v. LABORATORY CORPORATION OF AMERICA and LABORATORY CORPORATION OF AMERICA HOLDINGS, Defendants.	Case No. 15-CA-007914

FILED
CLERK OF CIRCUIT COURT
2015 OCT 23 PM 3:39
HILLSBOROUGH CNTY, FLA
CIRCUIT CIVIL

ORDER GRANTING VERIFIED MOTIONS TO APPEAR PRO HAC VICE
OF STEVEN F. BARLEY AND ELISABETH S. WALDEN

THIS CAUSE having come before the Court on the Verified Motions for Admission to Appear Pro Hac Vice Pursuant to Florida Rule of Judicial Administration 2.510 filed by Steven F. Barley and Elisabeth S. Walden on behalf of defendants Laboratory Corporation of America and Laboratory Corporation of America Holdings. This Court having considered the motions and all other relevant factors, it is hereby

ORDERED AND ADJUDGED that:

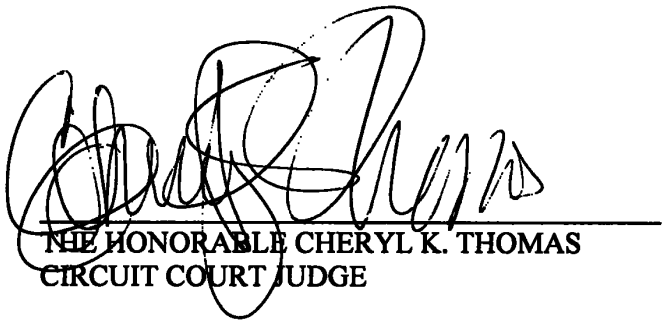
1. The Motions are GRANTED.

2. Steven F. Barley is authorized to appear and participate in this action and to receive notifications at the law firm of Hogan Lovells US LLP, 100 International Drive, Suite 2000, Baltimore, Maryland 21202, at email address steven.barley@hoganlovells.com.

ELECTRONICALLY SIGNED OCT 23 2015

3. Elisabeth S. Walden is authorized to appear and participate in this action and to receive notifications at the law firm of Hogan Lovells US LLP, 100 International Drive, Suite 2000, Baltimore, Maryland 21212, at email address elisabeth.walden@hoganlovells.com.

DONE AND ORDERED in Chambers at Tampa, Hillsborough County, Florida, this 23rd day of October, 2015.



THE HONORABLE CHERYL K. THOMAS
CIRCUIT COURT JUDGE

Copies furnished to:
All counsel of record

SCANNED OCT 23 2015

IN THE CIRCUIT COURT OF THE THIRTEENTH JUDICIAL CIRCUIT
IN AND FOR HILLSBOROUGH COUNTY, FLORIDA
CIVIL DIVISION

PATTY DAVIS, on behalf of herself and others similarly situated, Plaintiff, v. LABORATORY CORPORATION OF AMERICA and LABORATORY CORPORATION OF AMERICA HOLDINGS, Defendants.	Case No. 15-CA-007914

DEFENDANTS' CERTIFICATE OF NON-OBJECTION

YOU ARE HEREBY NOTIFIED that no objection having been received from any party within the time period provided by Fla. R. Civ. P. 1.351, Defendants Laboratory Corporation of America and Laboratory Corporation of America Holdings have issued the attached Subpoenas for Production of Documents Without Deposition directed to the following, who are not parties in the above-captioned litigation:

1. Orthopedic Medical Group of Tampa Bay, P.A.; and
2. Commercial Risk Management, Inc.

Dated: November 30, 2015.

Respectfully submitted,

/s/James L. VanLandingham
Carol A. Licko
Florida Bar No.: 435872
carol.licko@hoganlovells.com
James L. VanLandingham
Florida Bar No. 106761
james.vanlandingham@hoganlovells.com

HOGAN LOVELLS US LLP
600 Brickell Avenue, Suite 2700
Miami, FL 33131
Tel: (305) 459-6500
Fax: (305) 459-6550

Steven F. Barley (*admitted pro hac vice*)
Elisabeth S. Walden (*admitted pro hac vice*)
HOGAN LOVELLS US LLP
100 International Drive, Suite 2000
Baltimore, MD 21202
Tel: (410) 659-2700
Fax: (410) 659-2701
steve.barley@hoganlovells.com
elisabeth.walden@hoganlovells.com

Counsel for Defendants Laboratory Corporation of America and Laboratory Corporation of America Holdings

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on November 30, 2015, I served this document by email upon the following counsel of record:

Christa L. Collins
Harmon, Woods, Parker & Abrunzo, P.A.
Florida Bar # 0381829
110 North 11th Street, 2nd Floor
Tampa, Florida 33602
Email: clc@harmonwoodslaw.com
Counsel for Plaintiff

/s/James L. VanLandingham

11/30/2015 6:19 PM Electronically Filed: Hillsborough County/13th Judicial Circuit Page 2

IN THE CIRCUIT COURT OF THE THIRTEENTH JUDICIAL CIRCUIT
IN AND FOR HILLSBOROUGH COUNTY, FLORIDA
CIVIL DIVISION

PATTY DAVIS, on behalf of herself and others similarly situated, Plaintiff, v. LABORATORY CORPORATION OF AMERICA and LABORATORY CORPORATION OF AMERICA HOLDINGS, Defendants.	)	Case No. 15-CA-007914

SUBPOENA FOR PRODUCTION OF DOCUMENTS WITHOUT DEPOSITION

TO: Orthopedic Medical Group of Tampa Bay, P.A.
c/o Registered Agent:
Stuart A. Goldsmith, M.D.
615 Vonderberg Dr.
Brandon, FL 33511

YOU ARE COMMANDED to produce for inspection and copying those Documents (as defined in Exhibit "A") listed on Exhibit A hereto at the offices of Hogan Lovells US LLP, 600 Brickell Avenue, Suite 2700, Miami, Florida 33131 on or before December 16, 2015. You shall not be required to surrender the original Documents, files or things. **The Documents, or files may be sent by U.S. Mail or other delivery method to arrive at the offices of Hogan Lovells US LLP on or before December 16, 2015**. The Documents may be produced electronically.

If you fail to produce the Documents, you may be in contempt of court.

You are subpoenaed to produce the Documents by the following attorneys, and unless excused from this subpoena by these attorneys or the Court, you shall respond to this subpoena as directed.

You have the right to object to this production under Rule 1.351 of the Florida Rules of Civil Procedure.

In accordance with the Americans With Disabilities Act of 1990, persons needing a special accommodation to participate in this proceeding should contact James L. VanLandingham, no later than two (2) days prior to the proceeding. Please telephone (305) 459-6500 for assistance. If hearing impaired, telephone Florida Relay Service No. 1-800-955-8771.

Dated: November 30, 2015

Respectfully submitted,

/s/James L. VanLandingham
Carol A. Licko
Florida Bar No.: 435872
carol.licko@hoganlovells.com
James L. VanLandingham
Florida Bar No. 106761
james.vanlandingham@hoganlovells.com
HOGAN LOVELLS US LLP
600 Brickell Avenue, Suite 2700
Miami, FL 33131
Tel: (305) 459-6500
Fax: (305) 459-6550

Steven F. Barley (*admitted pro hac vice*)
Elisabeth S. Walden (*admitted pro hac vice*)
HOGAN LOVELLS US LLP
100 International Drive, Suite 2000
Baltimore, MD 21202
Tel: (410) 659-2700
Fax: (410) 659-2701
steve.barley@hoganlovells.com
elisabeth.walden@hoganlovells.com

Counsel for Defendants Laboratory Corporation of America and Laboratory Corporation of America Holdings

11/30/2015 6:19 PM Electronically Filed: Hillsborough County/13th Judicial Circuit Page 4

EXHIBIT "A"

DOCUMENTS TO BE PRODUCED

1. Any and all Documents that concern or relate to Orthopedic Medical Group of Tampa Bay, P.A.'s ordering of testing services provided by LabCorp to Ms. Patty Davis on or about February 6, 2014.

2. Any and all Documents that concern or relate to LabCorp's testing services provided to Ms. Patty Davis on or about February 6, 2014, including but not limited to instructions, bills, or invoices for such services.

3. Any and all Documents that concern or relate to Orthopedic Medical Group of Tampa Bay P.A.'s billing for treatment provided to Ms. Patty Davis during the Relevant Time Period.

4. Any and all Communications between Orthopedic Medical Group of Tampa Bay P.A. and workers compensation insurer Commercial Risk Management, Inc. concerning or relating to services provided to Ms. Patty Davis during the Relevant Time Period or the billing for such services.

5. Any and all Communications between Orthopedic Medical Group of Tampa Bay P.A. and LabCorp, including any Documents sent by Orthopedic Medical Group of Tampa Bay P.A. to LabCorp, concerning or relating to testing services provided by LabCorp to Ms. Patty Davis on or about February 6, 2014, or the billing or payment for such services.

6. Any and all Communications between Orthopedic Medical Group of Tampa Bay P.A. and Ms. Patty Davis concerning or relating to testing services provided by LabCorp on or about February 6, 2014, or the billing or payment for such services.

7. All communications, including email communications, between Orthopedic Medical Group of Tampa Bay P.A. and any other person concerning or relating to testing

services provided by LabCorp to Ms. Patty Davis on or about February 6, 2014, or the billing or invoicing of such services.

INSTRUCTIONS

The following instructions shall govern the Defendants' document requests:

1. These requests are governed by the definitions in the Florida Rules of Civil Procedure, which are incorporated by reference and supplemented as permitted by the specific definitions and instructions below.

2. In producing documents and other materials, you are requested to furnish all documents or things in your possession, custody or control, regardless of whether such documents or materials are possessed directly by you or your directors, officers, agents, employees, representatives, subsidiaries, managing agents, affiliates, investigators, or by your attorneys or their agents, employees, representatives or investigators.

3. If any part of a document is responsive to any request, the whole document is to be produced. Any alteration of a responsive document, including any marginal notes, handwritten notes, underlining, date stamps, received stamps, endorsed or filed stamps, drafts, revisions, modifications and other versions of a final document is a separate and distinct document and it must be produced.

4. If you are unable to produce a document in response to any request, so state, and indicate whether the document ever existed, or whether the document once existed but cannot be located. If any document once was, but is no longer in your possession, custody or control, state the whereabouts of any such document when last in your possession, custody or control, state the date and manner of its disposition and identify its last known custodian. To the extent any documents are lost or destroyed, produce any documents which support your assertion that the

document was lost or destroyed, and provide the date thereof. If you file a timely objection to any portion of a request, definition, or an instruction, provide a response to the remaining portion.

5. The fact that a document is produced by another party in the above-captioned action does not relieve you of the obligation to produce your copy of the same document, if the two documents are identical in all respects.

6. In producing documents and other materials, you are requested to furnish all documents or things in your possession, custody or control, regardless of whether such documents or materials are possessed directly by you or your representatives or agents.

7. Documents are to be produced in full; redacted documents will not constitute compliance with this Request. If any requested document or thing cannot be produced in full, produce it to the extent possible, indicating which document or portion of that document is being withheld and the reason that document is being withheld.

8. In producing documents, you are requested to produce the original of each document requested together with all non-identical copies and drafts of that document. If the original of any document cannot be located, a copy shall be provided in lieu thereof, and shall be legible and bound or stapled in the same manner as the original.

9. All documents shall be produced in the file folder in which the documents are kept or maintained. If applicable, for any document produced, produce copies of all labels or other identifying marks indicating the file folder. Documents attached to each other should not be separated.

10. Where a claim of privilege is asserted in objecting to any document demand, or subpart thereof, produce all requested documents that are not privileged. As to each document which you claim is privileged, provide a privilege log clearly identifying each such document, including the following information:

11/30/2015 6:19 PM Electronically Filed: Hillsborough County/13th Judicial Circuit Page 7

a. Whether the attorney-client communication privilege, the work-product doctrine, or another form of privilege provides the basis for withholding the document;

b. The type of document being withheld (letter, memo, etc.) and the subject matter;

c. The purpose for the creation of the document;

d. The date of the document;

e. The name of the author and the author's capacity;

f. The names of all recipients (including copy recipients) and the recipients' capacities; and

g. A detailed and specific explanation of all of the reasons why you contend that the document is privileged or immune from discovery, including a clear statement of all factual grounds and legal analyses in a non-conclusory fashion.

11. These requests shall be deemed to be continuing, and any additional documents responsive to the requests, which you acquire subsequent to the date of the deposition *duces tecum*, up to and including the date of trial, shall be furnished promptly after such information is acquired.

11/30/2015 6:19 PM Electronically Filed: Hillsborough County/13th Judicial Circuit Page 8

DEFINITIONS

The following definitions are hereby incorporated into each request:

1. The term "Action" means this proceeding styled as *Patty Davis v. Laboratory Corporation of America and Laboratory Corporation of America Holdings*, Case No. 15-CA-007914, pending in the Thirteenth Judicial Circuit in and for Hillsborough County, Florida.

2. The terms "Plaintiff," or "Davis" as used herein shall mean Patty Davis, individually, and any and all present and former agents or representatives.

3. The term "Complaint" shall mean the Class Action Complaint filed in this case on August 28, 2015.

4. The term "Commercial Risk Management" shall mean Plaintiff's Workers' Compensation insurer alleged in her Complaint and its present and former directors, members, managers, officers, employees, agents, representatives, affiliates, contractors, owners, parent companies (and their current and former directors, officers, employees, agents, and owners).

5. "Document(s)" means any written, typed, graphic, printed matter or electronically stored, in their entirety, including any addenda, supplements, amendments, revisions, exhibits and appendices thereto, and in their original form (or copies thereof where originals are unavailable), together with any copies thereof bearing notations, memoranda, or other written information not on the original. Documents also include envelopes, facsimile messages, contracts, agreements, statistical statements and records, financial statements, telephone logs and messages, articles, magazines, newspapers, inter-office and intra-office communications, electronic mail/message, and any preliminary data or revisions of the foregoing, or other tangible things which constitute or contain matters within the scope of the Florida Rules of Civil Procedure, and which are within the possession, custody, or control of you or any past or present agent, employee, consultant, attorney, or any other person acting on your behalf. The

11/30/2015 6:19 PM Electronically Filed: Hillsborough County/13th Judicial Circuit Page 9

term “Document” also includes the file, folder, tabs, and label attached to or containing any Document.

6. “Relevant Time Period” shall mean the period between December 13, 2013, through August 28, 2015.

7. As used herein, “communication” means any form of correspondence, instruction, publication, contact discussion, report or written, electronic or oral exchange between two or more persons.

8. “Concerning,” “pertaining,” “referring to” and “related to” shall mean containing, showing, reflecting, mentioning or describing in any way, directly or indirectly, to and is meant to include, among other things, matters that are or were underlying, supporting, connected, or having a nexus. It also includes documents now or previously attached or appended to, or used in the preparation of any document called for by each request for production.

9. The present tense includes the past and future tenses. The singular includes the plural, and the plural includes the singular. “All” means “any and all”; “any” means “any and all.” “Including” means “including but not limited to.” “And” and “or” encompass both “and” and “or.”

IN THE CIRCUIT COURT OF THE THIRTEENTH JUDICIAL CIRCUIT
IN AND FOR HILLSBOROUGH COUNTY, FLORIDA
CIVIL DIVISION

PATTY DAVIS, on behalf of herself and others similarly situated, Plaintiff, v. LABORATORY CORPORATION OF AMERICA and LABORATORY CORPORATION OF AMERICA HOLDINGS, Defendants.	)	Case No. 15-CA-007914

SUBPOENA FOR PRODUCTION OF DOCUMENTS WITHOUT DEPOSITION

TO: Commercial Risk Management, Inc.
c/o Registered Agent:
Susan E. Theis
1715 N. Westshore Blvd., Ste. 280
Tampa, FL 33607

YOU ARE COMMANDED to produce for inspection and copying those Documents (as defined in Exhibit "A") listed on Exhibit A hereto at the offices of Hogan Lovells US LLP, 600 Brickell Avenue, Suite 2700, Miami, Florida 33131 on or before December 16, 2015. You shall not be required to surrender the original Documents, files or things. **The Documents, or files may be sent by U.S. Mail or other delivery method to arrive at the offices of Hogan Lovells US LLP on or before December 16, 2015.** The Documents may be produced electronically.

If you fail to produce the Documents, you may be in contempt of court.

You are subpoenaed to produce the Documents by the following attorneys, and unless excused from this subpoena by these attorneys or the Court, you shall respond to this subpoena as directed.

You have the right to object to this production under Rule 1.351 of the Florida Rules of Civil Procedure.

In accordance with the Americans With Disabilities Act of 1990, persons needing a special accommodation to participate in this proceeding should contact James L. VanLandingham, no later than two (2) days prior to the proceeding. Please telephone (305) 459-6500 for assistance. If hearing impaired, telephone Florida Relay Service No. 1-800-955-8771.

Dated: November 30, 2015

Respectfully submitted,

/s/James L. VanLandingham
Carol A. Licko
Florida Bar No.: 435872
carol.licko@hoganlovells.com
James L. VanLandingham
Florida Bar No. 106761
james.vanlandingham@hoganlovells.com
HOGAN LOVELLS US LLP
600 Brickell Avenue, Suite 2700
Miami, FL 33131
Tel: (305) 459-6500
Fax: (305) 459-6550

Steven F. Barley (*admitted pro hac vice*)
Elisabeth S. Walden (*admitted pro hac vice*)
HOGAN LOVELLS US LLP
100 International Drive, Suite 2000
Baltimore, MD 21202
Tel: (410) 659-2700
Fax: (410) 659-2701
steve.barley@hoganlovells.com
elisabeth.walden@hoganlovells.com

Counsel for Defendants Laboratory Corporation of America and Laboratory Corporation of America Holdings

EXHIBIT "A"

DOCUMENTS TO BE PRODUCED

1. Any and all Documents that concern or relate to the Workers' Compensation claim made by Ms. Patty Davis, which according to documents filed in case number 14-011180DEJ within the State of Florida's Office of Judges of Compensation Claims, includes documents concerning or relating to carrier's claim file No. 80343764.

2. Any and all Communications between Commercial Risk Management, Inc. and LabCorp concerning or relating to Ms. Patty Davis's Workers' Compensation claim, which according to documents filed in case number 14-011180DEJ within the State of Florida's Office of Judges of Compensation Claims, includes documents concerning or relating to carrier's claim file No. 80343764. This includes but is not limited to communications concerning or relating to LabCorp's testing services provided to Ms. Patty Davis or about February 6, 2014, including but not limited to instructions, bills, or invoices for such services.

3. Any and all Communications between Commercial Risk Management, Inc. and Orthopedic Medical Group of Tampa Bay P.A. concerning or relating to testing services provided by LabCorp to Ms. Patty Davis on or about February 6, 2014, or the billing or payment for such services.

4. Any and all Communications between Commercial Risk Management, Inc. and Ms. Patty Davis concerning or relating to testing services provided by LabCorp on or about February 6, 2014, or the billing or payment for such services.

5. All communications, including email communications, between Commercial Risk Management, Inc. and any other person concerning or relating to testing services provided by LabCorp to Ms. Patty Davis on or about February 6, 2014, or the billing or invoicing of such services.

INSTRUCTIONS

The following instructions shall govern the Defendants' document requests:

1. These requests are governed by the definitions in the Florida Rules of Civil Procedure, which are incorporated by reference and supplemented as permitted by the specific definitions and instructions below.

2. In producing documents and other materials, you are requested to furnish all documents or things in your possession, custody or control, regardless of whether such documents or materials are possessed directly by you or your directors, officers, agents, employees, representatives, subsidiaries, managing agents, affiliates, investigators, or by your attorneys or their agents, employees, representatives or investigators.

3. If any part of a document is responsive to any request, the whole document is to be produced. Any alteration of a responsive document, including any marginal notes, handwritten notes, underlining, date stamps, received stamps, endorsed or filed stamps, drafts, revisions, modifications and other versions of a final document is a separate and distinct document and it must be produced.

4. If you are unable to produce a document in response to any request, so state, and indicate whether the document ever existed, or whether the document once existed but cannot be located. If any document once was, but is no longer in your possession, custody or control, state the whereabouts of any such document when last in your possession, custody or control, state the date and manner of its disposition and identify its last known custodian. To the extent any documents are lost or destroyed, produce any documents which support your assertion that the document was lost or destroyed, and provide the date thereof. If you file a timely objection to any portion of a request, definition, or an instruction, provide a response to the remaining portion.

11/30/2015 6:19 PM Electronically Filed: Hillsborough County/13th Judicial Circuit Page 14

5. The fact that a document is produced by another party in the above-captioned action does not relieve you of the obligation to produce your copy of the same document, if the two documents are identical in all respects.

6. In producing documents and other materials, you are requested to furnish all documents or things in your possession, custody or control, regardless of whether such documents or materials are possessed directly by you or your representatives or agents.

7. Documents are to be produced in full; redacted documents will not constitute compliance with this Request. If any requested document or thing cannot be produced in full, produce it to the extent possible, indicating which document or portion of that document is being withheld and the reason that document is being withheld.

8. In producing documents, you are requested to produce the original of each document requested together with all non-identical copies and drafts of that document. If the original of any document cannot be located, a copy shall be provided in lieu thereof, and shall be legible and bound or stapled in the same manner as the original.

9. All documents shall be produced in the file folder in which the documents are kept or maintained. If applicable, for any document produced, produce copies of all labels or other identifying marks indicating the file folder. Documents attached to each other should not be separated.

10. Where a claim of privilege is asserted in objecting to any document demand, or subpart thereof, produce all requested documents that are not privileged. As to each document which you claim is privileged, provide a privilege log clearly identifying each such document, including the following information:

a. Whether the attorney-client communication privilege, the work-product doctrine, or another form of privilege provides the basis for withholding the document;

b. The type of document being withheld (letter, memo, etc.) and the subject matter;

c. The purpose for the creation of the document;

d. The date of the document;

e. The name of the author and the author's capacity;

f. The names of all recipients (including copy recipients) and the recipients' capacities; and

g. A detailed and specific explanation of all of the reasons why you contend that the document is privileged or immune from discovery, including a clear statement of all factual grounds and legal analyses in a non-conclusory fashion.

11. These requests shall be deemed to be continuing, and any additional documents responsive to the requests, which you acquire subsequent to the date of the deposition *duces tecum*, up to and including the date of trial, shall be furnished promptly after such information is acquired.

11/30/2015 6:19 PM Electronically Filed: Hillsborough County/13th Judicial Circuit Page 16

DEFINITIONS

The following definitions are hereby incorporated into each request:

1. The term "Action" means this proceeding styled as *Patty Davis v. Laboratory Corporation of America and Laboratory Corporation of America Holdings*, Case No. 15-CA-007914, pending in the Thirteenth Judicial Circuit in and for Hillsborough County, Florida.

2. The terms "Plaintiff," or "Davis" as used herein shall mean Patty Davis, individually, and any and all present and former agents or representatives.

3. The term "Complaint" shall mean the Class Action Complaint filed in this case on August 28, 2015.

4. The term "Commercial Risk Management" shall mean Plaintiff's Workers' Compensation insurer alleged in her Complaint and its present and former directors, members, managers, officers, employees, agents, representatives, affiliates, contractors, owners, parent companies (and their current and former directors, officers, employees, agents, and owners).

5. "Document(s)" means any written, typed, graphic, printed matter or electronically stored, in their entirety, including any addenda, supplements, amendments, revisions, exhibits and appendices thereto, and in their original form (or copies thereof where originals are unavailable), together with any copies thereof bearing notations, memoranda, or other written information not on the original. Documents also include envelopes, facsimile messages, contracts, agreements, statistical statements and records, financial statements, telephone logs and messages, articles, magazines, newspapers, inter-office and intra-office communications, electronic mail/message, and any preliminary data or revisions of the foregoing, or other tangible things which constitute or contain matters within the scope of the Florida Rules of Civil Procedure, and which are within the possession, custody, or control of you or any past or present agent, employee, consultant, attorney, or any other person acting on your

11/30/2015 6:19 PM Electronically Filed: Hillsborough County/13th Judicial Circuit Page 17

behalf. The term "Document" also includes the file, folder, tabs, and label attached to or containing any Document.

6. "Relevant Time Period" shall mean the period between December 13, 2013, through August 28, 2015.

7. As used herein, "communication" means any form of correspondence, instruction, publication, contact discussion, report or written, electronic or oral exchange between two or more persons.

8. "Concerning," "pertaining," "referring to" and "related to" shall mean containing, showing, reflecting, mentioning or describing in any way, directly or indirectly, to and is meant to include, among other things, matters that are or were underlying, supporting, connected, or having a nexus. It also includes documents now or previously attached or appended to, or used in the preparation of any document called for by each request for production.

9. The present tense includes the past and future tenses. The singular includes the plural, and the plural includes the singular. "All" means "any and all"; "any" means "any and all." "Including" means "including but not limited to." "And" and "or" encompass both "and" and "or."

IN THE CIRCUIT COURT OF THE THIRTEENTH JUDICIAL CIRCUIT
IN AND FOR HILLSBOROUGH COUNTY, FLORIDA
CIVIL DIVISION

PATTY DAVIS,
on behalf of herself and others
similarly situated,

Plaintiff,
v.

LABORATORY CORPORATION
OF AMERICA, and LABORATORY
CORPORATION OF AMERICA
HOLDINGS,

Defendants.
_____/

CASE NO.: 15-CA-007914

DIVISION: A

CLASS REPRESENTATION

AMENDED NOTICE OF
DESIGNATION OF EMAIL ADDRESS FOR SERVICE

I, Christa L. Collins, of Harmon, Woods, Parker & Abrunzo, P.A., hereby file this Amended Notice of Designation of Email Address For Service, and requests that I am copied on all future correspondence, pleadings, etc., in the above styled cause. I hereby designate the following e-mail addresses:

Primary e-mail: service.clc@harmonwoodslaw.com
Secondary e-mail: clc@harmonwoodslaw.com

All parties are called upon to take notice of this amended e-mail designation and ensure that all pleadings be served upon the primary and secondary e-mail addresses set forth herein.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the undersigned counsel electronically filed the foregoing using the Florida ePortal filing system that will generate a Notice of Electronic Filing to the following at their designated email addresses, on this 18th day of December, 2015.

Steven F. Barley, Esquire
Elizabeth S. Walden, Esquire
Hogan Lovells US LLP
100 International Drive, Suite 200
Baltimore, MD 21202
Email: steven.barley@hoganlovells.com; elisabeth.walden@hoganlovells.com
[Attorneys for Laboratory Corporation of America and Laboratory Corporation of America Holdings]

Respectfully submitted,

Christa L. Collins, Esquire
Harmon, Woods, Parker & Abrunzo, P.A.
Florida Bar # 0381829
110 North 11th Street, 2nd Floor
Tampa, Florida
Telephone: (813) 864-1762
Facsimile: (813) 222-3616
Email: service.clc@harmonwoodslaw.com; clc@harmonwoodslaw.com
Counsel for Plaintiff

12/18/2015 4:27 PM Electronically Filed: Hillsborough County/13th Judicial Circuit Page 2

IN THE CIRCUIT COURT OF THE THIRTEENTH JUDICIAL CIRCUIT
IN AND FOR HILLSBOROUGH COUNTY, FLORIDA
CIVIL DIVISION

PATTY DAVIS,
on behalf of herself and others
similarly situated,

Plaintiff,
v.

LABORATORY CORPORATION
OF AMERICA, and LABORATORY
CORPORATION OF AMERICA
HOLDINGS,

Defendants.
_____/

CASE NO.: 15-CA-007914

DIVISION: A

CLASS REPRESENTATION

PLAINTIFF'S RESPONSES TO
DEFENDANTS' FIRST REQUEST FOR PRODUCTION

Plaintiff, PATTY DAVIS, through undersigned counsel, files this Response to Defendants' First Request For Production propounded to Plaintiff on or about November 10, 2015, and states:

NOTE All responses are based on knowledge / possession as of the date of this Response.

1. All communications, including notes of such communications, between Plaintiff and Commercial Risk Management, Inc., concerning or relating to testing services provided by LabCorp on or about February 6, 2014, or the billing, invoicing or payment of such services.

RESPONSE: Plaintiff will produce any responsive non-privileged documents, to the extent any exist, at a time and location mutually agreeable to the parties. If any privileged or protected documents are discovered, they will be listed on a log.

2. All communications, including notes of such communications, between Plaintiff and Orthopedic Medical Group of Tampa Bay, P.A. concerning or relating to testing services provided by LabCorp on or about February 6, 2014, or the billing, invoicing or payment of such services.

RESPONSE: **None**

3. All communications, including notes of such communications, between Plaintiff and LabCorp concerning or relating to testing services provided by LabCorp on or about February 6, 2014, or the billing, invoicing or payment of such services.

RESPONSE: **None.**

4. All communications, including email communications and/or notes of communications, between Plaintiff and any other person concerning or relating to testing services provided by LabCorp on or about February 6, 2014, or the billing, invoicing or payment of such services.

RESPONSE: **Objection to the extent this request seeks privileged attorney-client and work product information. Without waiving the foregoing objection, no responsive documents exist.**

5. All documents relating to or supporting your contention that LabCorp violated the Florida Consumer Collection Practices Act.

RESPONSE: **See the documents attached to the Complaint. See also the document attached and referred to in Plaintiff's answer to interrogatory number three in Defendants' First Set of Interrogatories to Plaintiff.**

6. All documents relating to or supporting your contention that LabCorp had actual knowledge that it could not collect payment from Plaintiff for testing services provided by LabCorp on or about February 6, 2014.

RESPONSE: **See the documents attached to the Complaint and the documents produced pursuant to Third Party Subpoenas issued by Defendants. See also the document attached hereto and referred to in response to interrogatory number three in Defendants' First Set of Interrogatories to Plaintiff.**

7. All documents identified in your Answers to Interrogatories.

RESPONSE: **See the document attached hereto.**

8. All documents referenced, consulted, reviewed or otherwise used by you in preparation of your Answers to Interrogatories.

RESPONSE: **Objection. This request seeks privileged attorney-client communications and work-product information. It is also overbroad, burdensome and harassing. Without waiving the foregoing objection, no responsive documents exist.**

01/13/2016 4:05 PM Electronically Filed: Hillsborough County/13th Judicial Circuit Page 2

9. All documents referenced, consulted, reviewed or otherwise used by you in preparation of your Complaint.

RESPONSE: Objection. This request seeks privileged attorney-client communications and work-product information. It is also overbroad, burdensome and harassing. Without waiving the foregoing objection, no responsive documents exist.

10. All documents reflecting any statements, whether written, oral, signed or unsigned, made by any person relating to the allegations of your Complaint.

RESPONSE: See the documents attached to the Complaint

11. All documents reflecting any admission against interest which you contend was made by LabCorp with respect to any issue involved in this Action.

RESPONSE: See the documents attached to the Complaint

12. All documents relating to or supporting your contention that LabCorp billed any person in the state of Florida other than you in a manner which violated the Florida Consumer Collection Practices Act or was otherwise unlawful.

RESPONSE: Plaintiff will produce any responsive documents at a mutually agreeable time and place.

13. All documents relating to or supporting your contention that the members of your proposed class can be identified from documents maintained by LabCorp, public records, or otherwise.

RESPONSE: See the documents attached to the Complaint.

14. All documents relating to or supporting the existence and amount of any damages you seek of any type on behalf of yourself or on behalf of the proposed class.

RESPONSE: These materials have not yet been produced by Defendants in discovery, therefore, Plaintiff cannot provide any more detailed information beyond Complaint. Moreover, this case is in its infancy and the damage is ongoing.

15. All retention or engagement letters with and invoices of any expert witness whose testimony you may seek to introduce in this Action.

RESPONSE: Objection to the extent this request seeks information and documents protected by the attorney-client and work-product privileges. Without waiving the foregoing objection, no responsive documents exist. Plaintiff will comply with any court orders requiring disclosure of expert information.

01/13/2016 4:05 PM Electronically Filed: Hillsborough County/13th Judicial Circuit Page 3

16. All communications, including notes of such communications, between you or your counsel and any expert witness whose expert testimony you may seek to introduce in this Action.

RESPONSE: Objection to the extent this request seeks information and documents protected by the attorney-client and work-product privileges. Without waiving the foregoing objections, no responsive documents exist. Plaintiff will comply with any court orders regarding disclosure of expert information.

17. All documents reviewed, reference or considered by any expert witness whose expert testimony you may seek to introduce in this Action.

RESPONSE: Objection to the extent this request seeks information and documents protected by the attorney-client and work-product privileges. Without waiving the foregoing objection, no responsive documents exist. Plaintiff will comply with any court orders requiring disclosure of expert information.

18. All documents, including notes, memoranda, or draft reports, relating to this Action created by any expert witness whose expert testimony you may seek to introduce in this Action.

RESPONSE: Objection to the extent this request seeks information and documents protected by the attorney-client and work-product privileges. Without waiving the foregoing objection, no responsive documents exist. Plaintiff will comply with any court orders requiring disclosure of expert information.

19. All documents not falling within the above demands that you intend to rely on, introduce as evidence or otherwise use at the trial of this Action or in any hearing.

RESPONSE: Objection. This request seeks information and documents protected by the attorney-client and work-product privileges. This request is also overbroad. Discovery is in its initial stages, and counsel has not yet made this determination. Counsel will comply with any court orders regarding disclosure of expert witnesses. Without waiving the foregoing objections, no responsive documents exist.

CERTIFICATE OF SERVICE

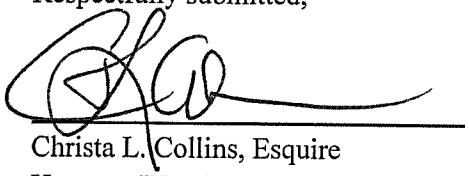
I HEREBY CERTIFY that the undersigned counsel electronically filed the foregoing using the Florida ePortal filing system that will generate a Notice of Electronic Filing to the following at their designated email addresses, on this 13 day of January, 2016.

All attachments to this pleading have been furnished by Electronic Mail as listed below:

Carol A. Licko
Florida Bar No. 435872
James L. VanLandingham
Florida Bar No. 106761
HOGAN LOVELLS US LLP
600 Brickell Avenue, Suite 2700
Miami, FL 33131
Email: carol.licko@hoganlovells.com; james.vanlandingham@hoganlovells.com

Steven F. Barley, Esquire
Elizabeth S. Walden, Esquire
Hogan Lovells US LLP
100 International Drive, Suite 200
Baltimore, MD 21202
Email: steven.barley@hoganlovells.com; elisabeth.walden@hoganlovells.com
[Attorneys for Laboratory Corporation of America and Laboratory Corporation of America Holdings]

Respectfully submitted,



Christa L. Collins, Esquire
Harmon, Woods, Parker & Abrunzo, P.A.
Florida Bar # 0381829
110 North 11th Street, 2nd Floor
Tampa, Florida
Telephone: (813) 864-1762
Facsimile: (813) 222-3616
Email: service.clc@harmonwoodslaw.com;
clc@harmonwoodslaw.com
Counsel for Plaintiff

01/13/2016 4:05 PM Electronically Filed: Hillsborough County/13th Judicial Circuit Page 5

AMERICAN MEDICAL COLLECTION AGENCY
4 Westchester Plaza, Building 4
Elmsford, NY 10523

AMCA COLLECTION AGENCY

31

01 LER LCS 290 403721649650
Pin Number: 76885837511
(844) 515-2622

Patty Davis
922 N Parsons Ave
Brandon, FL 33510-3108

November 26, 2015

Dear Patty Davis:

We have been authorized to contact you regarding your past due account with our client, **Laboratory Corporation Of America**, for laboratory tests ordered by your physician. You may have been contacted by another collection agency; however, we are now responsible to collect this money from you. These charges were not included in any bills you received from your doctor or hospital, but were billed directly by our client.

Your balance of **$133.00** is now significantly past due. Send your check or money order to us in the enclosed envelope made payable to American Medical Collection Agency. If you fail to resolve this debt, you will be subject to additional collection efforts that may include your account being reported to one or more national credit bureaus.

We urge you to address this bill. Call us at the above telephone number to make payment arrangements.

SEE THE REVERSE SIDE OF THIS LETTER FOR IMPORTANT INFORMATION ABOUT YOUR RIGHTS.

IMPORTANT NOTICE IMPORTANT NOTICE IMPORTANT NOTICE

LER-T - RMCB.WFD - 588643 - 00009561 - 1 of 1

SEE REVERSE SIDE FOR IMPORTANT INFORMATION.

Detach and return this portion with payment using enclosed envelope.

Amount Due: $133.00

To pay online: www.pay.amcaonline.com
☐VISA ☐MASTERCARD ☐DISCOVER
Card #:
Exp. Date: Amount:
Signature:
Client Code: LCS Account: 403721649650
Pin Number: **76885837511**
01 LER LCS 290

You Owe:	Laboratory Corporation Of America
Charge Date	January 6, 2014
Account Number	403721649650
Pin Number:	76885837511
Name:	Patty Davis
Street Address:	922 N Parsons Ave
City,State Zip:	Brandon, FL 33510-3108

AMCA
PO BOX 1235
ELMSFORD, NY 10523-0935

LCS133004037216496 50+++1

IN THE CIRCUIT COURT OF THE THIRTEENTH JUDICIAL CIRCUIT
IN AND FOR HILLSBOROUGH COUNTY, FLORIDA
CIVIL DIVISION

PATTY DAVIS,
on behalf of herself and others similarly situated,

Plaintiff,

v. Case No. 15-CA-007914

LABORATORY CORPORATION OF AMERICA and LABORATORY CORPORATION OF AMERICA HOLDINGS,

Defendants.

DEFENDANTS' OBJECTIONS AND RESPONSES TO PLAINTIFF'S FIRST REQUESTS FOR PRODUCTION

Defendants Laboratory Corporation of America and Laboratory Corporation of America Holdings (collectively, "LabCorp" or "Defendants"), pursuant to Rule 1.350 of the Florida Rules of Civil Procedure, hereby serve their Objections and Responses to the First Requests for Production (the "Requests") of Plaintiff Patty Davis ("Plaintiff") served March 7, 2016.

Preliminarily, LabCorp notes that the Requests' Instructions indicate that "the parties have discussed and agreed to entry of a Confidentiality Order in this matter" and requests that LabCorp "please provide your proposed Order well enough in advance . . . so as to not delay production." LabCorp provided a proposed Confidentiality Order to Plaintiff on January 7, 2016. Although Plaintiff's counsel indicated that Plaintiff was not initially inclined to agree to entry of the order and Defendants have provided a letter explaining the purpose of the proposed Confidentiality Order on February 12, 2016, Plaintiff's counsel has neither responded to that letter nor explained Plaintiff's basis for opposing the entry of the proposed Confidentiality Order.

GENERAL OBJECTIONS

Each of the following General Objections applies to each individual Request and is incorporated in Defendants' response to each Request as though set forth in full as to each.

1. Defendants object to the Requests and any definition or instruction to the extent they seek information unrelated to the issues raised in this action on the grounds that they are overly broad and unduly burdensome and seek information that is neither relevant to the subject matter of this action nor reasonably calculated to lead to the discovery of admissible evidence.

2. Defendants object to the Requests to the extent they are not limited in time or geography. Unless otherwise specified, the information provided herein pertains to the time period from August 28, 2013 through August 28, 2015 and relates only to LabCorp's provision of services in Florida and/or to patients residing in Florida.

3. Defendants object to the Requests and any definition or instruction to the extent they seek to impose obligations different from or in addition to those imposed by the Florida Rules of Civil Procedure or other applicable law.

4. Defendants object to the Requests to the extent that they seek disclosure of information subject to the attorney-client privilege, work product doctrine, business strategy privilege, trade secret privilege, or any other applicable privilege, immunity or protection (whether based upon statute, common law or stipulation). Defendants will not disclose such information or produce such documents, and inadvertent disclosure or production is not a waiver of any privilege or immunity.

5. Defendants object to the Requests to the extent they are vague or ambiguous, and to the extent they fail to describe the information sought with reasonable particularity or unreasonably require Defendants to speculate as to the nature and scope of the information sought.

04/11/2016 6:21 PM Electronically Filed: Hillsborough County/13th Judicial Circuit Page 2

6. Defendants object to the Requests to the extent they are cumulative and duplicative of one another.

7. Defendants object to the Requests to the extent they mischaracterize facts and/or assume disputed facts that are not in evidence.

8. Defendants object to the Requests and any definition or instruction to the extent they seek information not within Defendants' possession, custody, or control. Defendants cannot and will not produce any such documents or seek to compel third parties to produce documents that could be responsive to the Requests.

9. Defendants object to the Requests to the extent that they seek information that is publicly available, equally accessible to Plaintiff as it is to Defendants, or available from a less burdensome or less costly source than Defendants.

10. Defendants objects to the Requests, including but not limited to the definition of "Injured employee," to the extent they are premised on legal conclusions and call on Defendants to make a legal conclusion in responding to the Requests.

11. Defendants object to the Instructions and Technical Specifications in Exhibit A to the extent they are overly broad and unduly burdensome and purport to impose burdens different from or in addition to those imposed by the Florida Rules of Civil Procedure or other applicable law. Furthermore, and without limitation, Defendants object to the extent that Exhibit A purports to require production of information not reasonably maintained within the ordinary course of business. Any produced documents will be produced either as maintained in the ordinary course of business or in a standard Concordance ready format, including:

- Images provided in Group IV single-page TIFF files;

04/11/2016 6:21 PM Electronically Filed: Hillsborough County/13th Judicial Circuit Page 3

- A cross-reference file to link the images to the database in a Opticon .OPT format;
- A data file to upload all the metadata to the database in a Concordance .DAT format with field headers;
- Searchable text provided either with the .DAT file or in a separate folder using the cross reference pointer in the .DAT file; and
- Linked native files provided in a separate folder named NATIVES with a cross reference pointer within the .DAT file.

12. Defendants object to the definition of the term "Defendants" on the grounds that it is vague, ambiguous, overly broad and purports to require information from entities and individuals that are not a party to this action. In particular, Defendants object to the extent the definition seeks to impose any obligation to retrieve or provide information from or on behalf of "parents, subsidiaries, predecessors, successors, assigns, agents… and all other persons and entities representing it [sic] or acting on its [sic] behalf."

13. Defendants object to the definition of "Data Dictionary" because it is overly broad and unduly burdensome. Defendants further object to this definition to the extent that it purports to require production of information that is not within the control of Defendants and creation of materials that do not exist. Defendants further object to the definition of "Data Dictionary" to the extent that the definition employs terms that are vague and ambiguous including "field names," "field values and codes," "field value translations," "associated lookup tables," "input constraints," "auto-filled fields" and "programming logic." Finally, Defendants object to this definition to the extent that it seeks information that is neither relevant to the subject matter of this action nor reasonably calculated to lead to the discovery of admissible evidence.

14. Defendants object to the Requests and any definition or instruction as overly broad and unduly burdensome to the extent they require Defendants to locate "all" or "any" records related to a specific topic.

15. All specific responses to the Requests are provided without waiver of, and with express reservation of (a) all objections as to the competency, relevancy, materiality, and admissibility of the responses and the subject matter thereof as evidence in any further proceedings in this action, including trial and/or final hearing, or in any other action; (b) all privileges, including the attorney-client privilege and the work product doctrine; (c) the right to object on any ground at any time to a demand or request for further responses to these or any other discovery requests; and (d) the right to move for a protective order to protect the confidentiality of any information disclosed or for any other purpose provided by law.

16. Defendants' provision of information in response to the Requests shall in no way constitute an admission relative to the existence of any information sought, to the relevance or admissibility of any response, or to the truth or accuracy of any statement or characterization contained in any particular request.

17. All objections, answers and responses are based on information presently known to Defendants based upon reasonable and diligent investigation conducted to date. Discovery and investigation in this matter are ongoing, and the objections and responses set forth herein are made without prejudice to Defendants' right to supplement, amend, or otherwise revise these responses and objections to the extent any of the information provided contains errors or omissions or if more accurate or complete information becomes available, and to raise any additional objections it may have in the future.

RESPONSES AND SPECIFIC OBJECTIONS

REQUEST 1:

The data dictionaries for the following systems identified in Defendants' Responses and Objections to Plaintiff's First Set of Interrogatories:

- **LabCorp Communication System (LCM)**
- **LabCorp Billing System (LCBS)**
- **Beacon System**
- **Specimen Integrity System**
- **Learning Education and Development Group, and**
- **Artiva**

RESPONSE: Defendants object to the Request as compound. Furthermore, Defendants object to the Request's reliance on the definition of "Data Dictionary," which renders it overbroad, unduly burdensome, and unintelligible, and purports to require Defendants to create materials that do not exist.

Subject to and without waiving the foregoing General Objections and Specific Objections, Defendants state that non-privileged documents which identify the forms of data stored in the identified systems, if any, will be made available for inspection at a mutually agreeable date, time and location after the entry of an appropriate protective order by the Court.

REQUEST 2:

Documents and information sufficient to show how each system identified above and any other LabCorp documents or systems capture, maintain and utilize information that a patient is an injured employee.

RESPONSE: Defendants object to the Request as compound and to the term "injured employee" because it calls for a legal conclusion. Defendants object to the Request to the extent that the phrase "system identified above" is vague and ambiguous. Defendants further object to the Request because it is vague and ambiguous with respect to what documents Plaintiff would deem "sufficient to show" the several categories of information requested. To the extent the

Request seeks "information" requiring a narrative response that is not contemplated by Rule 1.350, the Request is improper.

Subject to and without waiving the foregoing General Objections and Specific Objections, Defendants refer Plaintiff to their response to Plaintiff's Interrogatory No. 10, in which Defendants explained that LabCorp possesses no system, database, or other record, written or electronic, which tracks information concerning "injured employees." Defendants further state that there are no non-privileged, responsive documents.

REQUEST 3:

Documents and information sufficient to show the reports that are generated or can be generated by the system identified above and any other LabCorp system relating to the following relevant issues:

- **When a patient is an injured employee;**
- **When a workers' compensation carrier is responsible for payment of medical services provided to a patient;**
- **When an injured employee has been billed for services provided by LabCorp;**
- **When an injured employee's account has been referred to a collection agency.**

RESPONSE: Defendants object to the Request as compound and to the term "injured employee" because it calls for a legal conclusion. Defendants further object to the Request because the terms "system identified above" and "collection agency" are vague and ambiguous. Defendants also object to this Request because it seeks information which is neither relevant to the subject matter of this action nor reasonably calculated to lead to the discovery of admissible evidence, particularly documents relating to LabCorp's collection activities which do not bear on the existence or measure of liability. Defendants further object to the Request because it is vague and ambiguous with respect to what documents Plaintiff would deem "sufficient to show" the several categories of information requested. To the extent the Request seeks "information" requiring a narrative response that is not contemplated by Rule 1.350, the Request is improper.

04/11/2016 6:21 PM Electronically Filed: Hillsborough County/13th Judicial Circuit Page 7

Subject to and without waiving the foregoing General Objections and Specific Objections, Defendants refer Plaintiff to their response to Plaintiff's Interrogatory No. 10, in which Defendants explained that LabCorp possesses no system, database, or other record, written or electronic, which tracks information concerning "injured employees." To the extent that LabCorp possesses non-privileged documents which identify the report generating capabilities of the systems identified in Request 1 as they relate to workers compensation insurance responsibility or specimen billing history, such documents will be made available for inspection at a mutually agreeable date, time and location after the entry of an appropriate protective order by the Court.

REQUEST 4:

Documents and information sufficient to show how each system identified above and any other LabCorp documents or systems capture, maintain and utilize information that a workers' compensation carrier may be responsible to pay for medical services performed by LabCorp to a patient.

RESPONSE: Defendants object to the Request to the extent that the phrases "system identified above" and "responsible to pay for medical services performed by LabCorp to a patient" are vague and ambiguous. Defendants further object to the Request because it is vague and ambiguous with respect to what documents Plaintiff would deem "sufficient to show" the information requested. To the extent the Request seeks "information" requiring a narrative response that is not contemplated by Rule 1.350, the Request is improper.

Subject to the foregoing General Objections and Specific Objections, Defendants state that, to the extent that LabCorp possesses non-privileged documents which show that the systems identified in Request 1 capture, maintain and utilize information that a workers compensation insurance carrier may have financial responsibility for a specimen, such documents will be made

available for inspection at a mutually agreeable date, time and location after the entry of an appropriate protective order by the Court.

REQUEST 5:

Documents and information sufficient to show the extent to which, and if so, how any of the systems identified in Request 1 above communicate with any other system related to a patient being an injured employee.

RESPONSE: Defendants object to the Request as compound and to the term "injured employee" because it calls for a legal conclusion. Defendants further object to the Request because the term "communicate" is vague and ambiguous. Defendants further object to the Request because it is vague and ambiguous with respect to what documents Plaintiff would deem "sufficient to show" the several categories of information requested. To the extent the Request seeks "information" requiring a narrative response that is not contemplated by Rule 1.350, the Request is improper. In particular, Defendants object to the formulation of the Request which is not amenable to a documentary response.

Subject to and without waiving the foregoing General Objections and Specific Objections, Defendants refer Plaintiff to their response to Plaintiff's Interrogatory No. 10, in which Defendants explained that LabCorp possesses no system, database, or other record, written or electronic, which tracks information concerning "injured employees." Defendants further state that there are no non-privileged, responsive documents.

REQUEST 6:

Documents and information sufficient to show whether LabCorp assigns unique identifiers to its patients and if so how the systems listed in Request 1 and any other LabCorp documents or systems capture, maintain and utilize such unique identifiers.

RESPONSE: Defendants object to the Request because the term "unique identifiers" is vague and ambiguous. Defendants further object to the Request because it is vague and

04/11/2016 6:21 PM Electronically Filed: Hillsborough County/13th Judicial Circuit Page 9

ambiguous with respect to what documents Plaintiff would deem "sufficient to show" the several categories of information requested. To the extent the Request seeks "information" requiring a narrative response that is not contemplated by Rule 1.350, the Request is improper. In particular, Defendants object to the formulation of the Request which is not amenable to a documentary response.

Subject to the foregoing General Objections and Specific Objections, Defendants state that LabCorp assigns specimen numbers but does not assign identification numbers or any other unique identifier to each LabCorp patient. Accordingly, there are no non-privileged, responsive documents.

REQUEST 7:

Documents and information sufficient to show the codes referred to in your answer to Interrogatory 4 that designate a "transaction as involving workers' compensation insurance" in Florida or that a patient is an injured employee.

RESPONSE: Defendants object to the Request as compound and to the term "injured employee" because it calls for a legal conclusion. Defendants further object to the Request because the term "in Florida" is vague and ambiguous. Defendants further object to the Request because it is vague and ambiguous with respect to what documents Plaintiff would deem "sufficient to show" the several categories of information requested. To the extent the Request seeks "information" requiring a narrative response that is not contemplated by Rule 1.350, the Request is improper.

Subject to and without waiving the foregoing General Objections and Specific Objections, Defendants refer Plaintiff to their response to Plaintiff's Interrogatory No. 10, in which Defendants explained that LabCorp possesses no system, database, or other record, written or electronic, which tracks information concerning "injured employees." To the extent

that LabCorp possesses non-privileged documents which identify the code(s) used in the LCM fields relating to billing which designate a transaction as involving workers compensation insurance, for transactions involving patients residing or receiving services in Florida, such documents will be made available for inspection at a mutually agreeable date, time and location after the entry of an appropriate protective order by the Court.

REQUEST 8:

Documents and information sufficient to show whether, and if so how, LabCorp gathers and utilizes information regarding whether a patient is an injured employee when the referral comes to LabCorp as a written order from a referring physician, as described in your answer to Interrogatory 4.

RESPONSE: Defendants object to the term "injured employee" because it calls for a legal conclusion. Defendants further object to the Request because it is vague and ambiguous with respect to what documents Plaintiff would deem "sufficient to show" the several categories of information requested. To the extent the Request seeks "information" requiring a narrative response that is not contemplated by Rule 1.350, the Request is improper. In particular, Defendants object to the formulation of the Request which is not amenable to a documentary response. Defendants also object to the Request to the extent that it mischaracterizes Defendants' response to Plaintiff's Interrogatory No. 4.

Subject to and without waiving the foregoing General Objections and Specific Objections, Defendants refer Plaintiff to their responses to Plaintiff's Interrogatory No. 4, in which Defendants described LabCorp's processes for collecting billing information including workers compensation insurance information, and No. 10, in which Defendants explained that LabCorp possesses no system, database, or other record, written or electronic, which tracks information concerning "injured employees." Defendants further state that the purpose of a written order is to identify the testing to be performed, not to convey "injured employee" status

04/11/2016 6:21 PM Electronically Filed: Hillsborough County/13th Judicial Circuit Page 11

information. While it is possible that, in isolated instances, a medical provider may have included information relevant to a patient's "injured employee" status with an order, such information is not conveyed with the great majority of orders. In those limited instances where such information is conveyed, it is not centralized in any fashion that would enable Defendants to search for or otherwise identify orders containing such information without resort to the unduly burdensome task of reviewing possibly hundreds of thousands of individual referral and order documents.

REQUEST 9:

Documents and information sufficient to show whether, and if so how, LabCorp gathers and utilizes information regarding whether a patient is an injured employee when the referral comes to LabCorp as an electronic order from a referring physician, as described in your answer to Interrogatory 4.

RESPONSE: Defendants object to the term "injured employee" because it calls for a legal conclusion. Defendants further object to the Request because it is vague and ambiguous with respect to what documents Plaintiff would deem "sufficient to show" the several categories of information requested. To the extent the Request seeks "information" requiring a narrative response that is not contemplated by Rule 1.350, the Request is improper. In particular, Defendants object to the formulation of the Request which is not amenable to a documentary response. Defendants also object to the Request to the extent that it mischaracterizes Defendants' response to Plaintiff's Interrogatory No. 4.

Subject to and without waiving the foregoing General Objections and Specific Objections, Defendants refer Plaintiff to their responses to Plaintiff's Interrogatory No. 4, in which Defendants described LabCorp's processes for collecting billing information including workers compensation insurance information, and No. 10, in which Defendants explained that LabCorp possesses no system, database, or other record, written or electronic, which tracks

information concerning "injured employees." Defendants further state that the purpose of an electronic order is to identify the testing to be performed, not to convey "injured employee" status information. While it is possible that, in isolated instances, a medical provider may have included information relevant to a patient's "injured employee" status with an order, such information is not conveyed with the great majority of orders. In those limited instances where such information is conveyed, it is not centralized in any fashion that would enable Defendants to search for or otherwise identify orders containing such information without resort to the unduly burdensome task of reviewing possibly hundreds of thousands of individual referral and order documents.

REQUEST 10:

Documents and information sufficient to show whether, and if so how, LabCorp gathers and utilizes information regarding whether a patient is an injured employee when the patient intake occurs at a LabCorp facility as described in your answer to Interrogatory 4.

RESPONSE: Defendants object to the term "injured employee" because it calls for a legal conclusion. Defendants also object to the Request as overbroad and unduly burdensome to the extent that it could be construed to require the review and production of possibly hundreds of thousands of individual intake documents. Defendants further object to the Request because it is vague and ambiguous with respect to what documents Plaintiff would deem "sufficient to show" the several categories of information requested. To the extent the Request seeks "information" requiring a narrative response that is not contemplated by Rule 1.350, the Request is improper. In particular, Defendants object to the formulation of the Request which is not amenable to a documentary response. Defendants also object to the Request to the extent that it mischaracterizes Defendants' response to Plaintiff's Interrogatory No. 4.

Subject to and without waiving the foregoing General Objections and Specific Objections, Defendants refer Plaintiff to their responses to Plaintiff's Interrogatory No. 4, in which Defendants described LabCorp's processes for collecting billing information including workers compensation insurance information, and No. 10, in which Defendants explained that LabCorp possesses no system, database, or other record, written or electronic, which tracks information concerning "injured employees." Defendants further state that there are no non-privileged, responsive documents.

REQUEST 11:

Documents and information sufficient to show any codes used by LabCorp in any of its systems and documents to designate that a patient is an injured employee.

RESPONSE: Defendants object to the term "injured employee" because it calls for a legal conclusion. Defendants also object to the Request as overly broad and unduly burdensome to the extent it seeks information concerning "any of [LabCorp's] systems" including a host of systems which have no relevance whatsoever to the subject matter of this litigation. Defendants further object to the Request because it is vague and ambiguous with respect to what documents Plaintiff would deem "sufficient to show" the information requested. To the extent the Request seeks "information" requiring a narrative response that is not contemplated by Rule 1.350, the Request is improper.

Subject to and without waiving the foregoing General Objections and Specific Objections, Defendants refer Plaintiff to their response to Plaintiff's Interrogatory No. 10, in which Defendants explained that LabCorp possesses no system, database, or other record, written or electronic, which tracks information concerning "injured employees." Defendants further state that there are no non-privileged, responsive documents.

04/11/2016 6:21 PM Electronically Filed: Hillsborough County/13th Judicial Circuit Page 14

REQUEST 12:

Documents and information sufficient to show whether, and if so how, LabCorp has access to a referring provider's medical and intake records on a patient by verbal, written or electronic means.

RESPONSE: Defendants object to this Request as compound, overbroad and not reasonably calculated to lead to admissible evidence. Defendants also object because the phrase "referring provider's medical and intake records on a patient" is vague and ambiguous. Defendants further object to the Request because it is vague and ambiguous with respect to what documents Plaintiff would deem "sufficient to show" the information requested. To the extent the Request seeks "information" requiring a narrative response that is not contemplated by Rule 1.350, the Request is improper. In particular, Defendants object to the formulation of the Request which is not amenable to a documentary response.

Subject to and without waiving the foregoing General Objections and Specific Objections, Defendants state that there are no non-privileged, responsive documents.

REQUEST 13:

Documents sufficient to show LabCorp's policies, protocols and procedures that relate to the following relevant issues:

- **Identifying when a patient is an injured employee;**
- **Any safeguards LabCorp uses to prevent injured employees being billed;**
- **Circumstances when a transaction is designated at intake "as involving workers' compensation" as described in your answer to Interrogatory 4, but LabCorp does not have information sufficient to bill the carrier;**
- **When a workers' compensation carrier denies a claim;**
- **When patient accounts are referred to collection agencies.**

RESPONSE: Defendants object to the Request as compound and to the term "injured employee" because it calls for a legal conclusion. Defendants further object to the Request because the term "collection agencies" is vague and ambiguous. Defendants also object to this Request because it is overbroad and seeks information which is neither relevant to the subject

04/11/2016 6:21 PM Electronically Filed: Hillsborough County/13th Judicial Circuit Page 15

matter of this action nor reasonably calculated to lead to the discovery of admissible evidence, including documents relating to LabCorp's collection activities which do not bear on the existence or measure of liability. Defendants further object to the Request because it is vague and ambiguous with respect to what documents Plaintiff would deem "sufficient to show" the several categories of information requested. To the extent the Request seeks "information" requiring a narrative response that is not contemplated by Rule 1.350, the Request is improper.

Subject to and without waiving the foregoing General Objections and Specific Objections, Defendants refer Plaintiff to their responses to Plaintiff's Interrogatory No. 4, in which Defendants described LabCorp's processes for collecting billing information including workers compensation insurance information, No. 5, in which Defendants described processes for submitting claims to workers compensation insurers and safeguards used to prevent billing patients for accounts identified as the responsibility of such insurers, and No. 10, in which Defendants explained that LabCorp possesses no system, database, or other record, written or electronic, which tracks information concerning "injured employees." Defendants further state that LabCorp's Business Practices Manual and non-privileged documents reflecting LabCorp's procedures and training as referenced in the responses to Plaintiff's Interrogatory Nos. 4 and 5 will be made available for inspection at a mutually agreeable date, time and location after the entry of an appropriate protective order by the Court.

REQUEST 14:

Documents and information sufficient to show the documents, systems, policies, protocols and procedures utilized by the Third party Denials Group when a workers' compensation carrier denies a claim, as referred to in your answer to Interrogatory 5.

RESPONSE: Defendants object that this Request is compound, overbroad and is not reasonably calculated to lead to admissible evidence. Defendants also object to the Request

because it is vague and ambiguous with respect to what documents Plaintiff would deem "sufficient to show" the several categories of information requested. To the extent the Request seeks "information" requiring a narrative response that is not contemplated by Rule 1.350, the Request is improper. Defendants object to the Request to the extent that it is cumulative of the documents requested in Request 13 and to the extent that it mischaracterizes Defendants' response to Plaintiff's Interrogatory No. 5.

Subject to and without waiving the foregoing General Objections and Specific Objections, Defendants state that non-privileged documents reflecting LabCorp's procedures and training as referenced in the response to Plaintiff's Interrogatory No. 5 will be made available for inspection at a mutually agreeable date, time and location after the entry of an appropriate protective order by the Court.

REQUEST 15:

Documents sufficient to show the documents, electronic systems, policies, protocols and procedures that relate to referral of patient accounts to collection agencies.

RESPONSE: Defendants object to the Request because the term "collection agencies" is vague and ambiguous. Defendants also object to this Request because it is overbroad and seeks information which is neither relevant to the subject matter of this action nor reasonably calculated to lead to the discovery of admissible evidence, particularly documents relating to LabCorp's collection activities which do not bear on the existence or measure of liability. Defendants object to the Request because it is vague and ambiguous with respect to what documents Plaintiff would deem "sufficient to show" the several categories of information requested. To the extent the Request seeks "information" requiring a narrative response that is not contemplated by Rule 1.350, the Request is improper. Defendants further object that this Request as cumulative of the documents requested in Request 13.

Subject to and without waiving the foregoing General Objections and Specific Objections, Defendants state that, to the extent there exist non-privileged documents reflecting LabCorp's policies and procedures for referral of accounts for which a workers compensation insurer has financial responsibility to collection agencies, such documents will be made available for inspection at a mutually agreeable date, time and location after the entry of an appropriate protective order by the Court.

REQUEST 16:

The relevant personnel handbook and policy manuals related to your answers to Interrogatories 4 and 5.

RESPONSE: Defendants object to the Request to the extent that it is cumulative of the documents requested in Request 13 and to the extent that it mischaracterizes Defendants' responses to Plaintiff's Interrogatory Nos. 4 and 5.

Subject to the foregoing General Objections and Specific Objections, Defendants state that LabCorp's Business Practices Manual and non-privileged documents reflecting LabCorp's procedures and training as referenced in the responses to Plaintiff's Interrogatory Nos. 4 and 5 will be made available for inspection at a mutually agreeable date, time and location after the entry of an appropriate protective order by the Court.

REQUEST 17:

Documents and information sufficient to show the systems that were searched and the filters, queries and reports that you utilized to prepare your answers to Interrogatories 10 and 11.

RESPONSE: Defendants object to this Request on the grounds that the terms "filters" and "queries" are vague and ambiguous. Defendants further object that this Request seeks information protected by the Attorney-Client privilege or Attorney Work Product doctrine and refer Plaintiff to the response to Interrogatory No. 18. Defendants also object to the Request

because it is vague and ambiguous with respect to what documents Plaintiff would deem "sufficient to show" the information requested. To the extent the Request seeks "information" requiring a narrative response that is not contemplated by Rule 1.350, the Request is improper.

REQUEST 18:

Documents and information sufficient to show the protocols, policies and procedures that relate to occasions when LabCorp receives a communication from a workers' compensation carrier, patient, attorney or other representative of a patient, or the State Department of Workers' Compensation, objecting to or demanding that you cease billing a patient that was injured on the job. This request is specifically not asking for work-product documents created in anticipation of this litigation or specific attorney client communications relating to this litigation. Plaintiff seeks only non-privileged, responsive documents.

RESPONSE: Defendants further object that this Request on grounds that the term "patient that was injured on the job" is vague and ambiguous. Defendants further object that this Request seeks information protected by the Attorney-Client privilege or Attorney Work Product doctrine. Defendants also object to the Request because it is vague and ambiguous with respect to what documents Plaintiff would deem "sufficient to show" the information requested. To the extent the Request seeks "information" requiring a narrative response that is not contemplated by Rule 1.350, the Request is improper.

Subject to the foregoing General Objections and Specific Objections, Defendants refer Plaintiff to their response to Plaintiff's Interrogatory No. 13 in which Defendants explained that LabCorp has no system or record tracking information concerning "occasions" on which LabCorp was "advised" by "an insurance carrier, attorney, or the State of Florida Division of Workers' Compensation" "to cease billing the patient." Defendants further state that there are no non-privileged, responsive documents.

REQUEST 19:

Copies of any of the communications described in Request 17 above received by you in the past 5 years. This request is specifically not asking for work-product documents created in anticipation of this litigation or specific attorney client communications relating to this litigation. Plaintiff seeks only non-privileged, responsive documents.

RESPONSE: Defendants object that this Request is unintelligible because Request 17 does not describe communications. Based on foregoing General Objections and Specific Objections, Defendants state that they are unable to respond further to the Request.

REQUEST 20:

Documents and information sufficient to identify the electronic systems referred to in your answers to Interrogatories 7 and 15.

RESPONSE: Defendants also object to the Request because it is vague and ambiguous with respect to what documents Plaintiff would consider to be "sufficient to identify" the information requested. Plaintiff's Interrogatory Nos. 7 and 15 required Defendants to "list and describe" certain LabCorp records systems and Defendants responded to these interrogatories. Plaintiff's request for "[d]ocuments and information sufficient to identify" the same systems is both unintelligible in that it fails to describe the information sought with reasonable particularity and unreasonably requires Defendants to speculate as to the nature and scope of the information sought, and improper to the extent it seeks "information" requiring a narrative response that is not contemplated by Rule 1.350. Defendants further object that this Request is compound, overbroad and is not reasonably calculated to lead to admissible evidence.

Subject to the foregoing General Objections and Specific Objections, Defendants refer Plaintiff to their responses to Plaintiff's Interrogatory Nos. 7, 15, 16 and 17 and, based on those objections, Defendants state that they are unable to respond further to the Request.

04/11/2016 6:21 PM Electronically Filed: Hillsborough County/13th Judicial Circuit Page 20

REQUEST 21:

Documents sufficient to show the following relevant information related to the "Order Processing and Exception Management Group" referred to in your answer to Interrogatory 4:

- **The systems utilized by this group to capture, utilize, house and transmit information obtained after intake that a patient is an injured employee and workers compensation is involved;**
- **The Standard Operating Procedure and LabCorp Business Practices Manual referred to in your answer to Interrogatory 4;**
- **The systems utilized by this group to correct billing formation for injured employees, and who this information is communicated to.**

RESPONSE: Defendants object to the Request as compound and to the term "injured employee" because it calls for a legal conclusion. Defendants further object that this Request is compound, overbroad, is not reasonably calculated to lead to admissible evidence, and to the extent that it is cumulative of the documents sought by other Requests, including Request 16. Defendants further object to the Request because it is vague and ambiguous with respect to what documents Plaintiff would deem "sufficient to show" the several categories of information requested. To the extent the Request seeks "information" requiring a narrative response that is not contemplated by Rule 1.350, the Request is improper. In particular, Defendants object to the formulation of the Request some portions of which are not amenable to a documentary response. Defendants also object to the Request to the extent that it mischaracterizes Defendants' response to Plaintiff's Interrogatory No. 4.

Subject to the foregoing General Objections and Specific Objections, Defendants refer Plaintiff to their response to Interrogatory No. 4. Defendants further state that LabCorp's Business Practices Manual and non-privileged documents reflecting LabCorp's procedures and training as referenced in the response to Plaintiff's Interrogatory No. 4 will be made available for

inspection at a mutually agreeable date, time and location after the entry of an appropriate protective order by the Court.

REQUEST 22:

Documents and information sufficient to show the extent to which, and how, LabCorp utilizes Claim form 1500, approved by the National Uniform Claim Committee (NUCC), a copy of which is attached as exhibit "A," with respect to the following relevant issues:

- **Whether LabCorp requests or receives copies of form 1500 as completed by referring providers, and if so, how that information is utilized and housed;**
- **Whether LabCorp requests or receives information from referring providers related to the information contained in field #10 which captures when the patient's condition is "related to employment;"**
- **Whether LabCorp makes use of form 1500, and if so, how those claims forms are housed.**

RESPONSE:

Defendants further object that this Request is compound, overbroad, unduly burdensome and not reasonably calculated to lead to admissible evidence. Defendants further object to the Request because it is vague and ambiguous with respect to what documents Plaintiff would deem "sufficient to show" the several categories of information requested. To the extent the Request seeks "information" requiring a narrative response that is not contemplated by Rule 1.350, the Request is improper. In particular, Defendants object to the formulation of the Request which is not amenable to a documentary response.

Subject to the foregoing General Objections and Specific Objections, Defendants state that there are no non-privileged, responsive documents showing that LabCorp requests or receives form 1500 from other medical providers. Defendants state that, to the extent there exist non-privileged documents reflecting that LabCorp's policies or procedures include the use of form 1500 in connection with collecting payment for services for which a workers compensation insurer has financial responsibility, such documents will be made available for inspection at a

mutually agreeable date, time and location after the entry of an appropriate protective order by the Court.

REQUEST 23:

Documents and information sufficient to show the following relevant information concerning when a paper claim form has been sent to a workers' compensation carrier as described in your answer to Interrogatory 5:

- **The policies, procedures and protocols that relate to the preparation, handling, transmission and storage of paper claim forms;**
- **Whether and how such forms are stored electronically.**

RESPONSE: Defendants further object that this Request is compound, overbroad, unduly burdensome and not reasonably calculated to lead to admissible evidence. Defendants further object to the Request because it is vague and ambiguous with respect to what documents Plaintiff would deem "sufficient to show" the several categories of information requested. To the extent the Request seeks "information" requiring a narrative response that is not contemplated by Rule 1.350, the Request is improper. In particular, Defendants object to the formulation of the Request which is not amenable to a documentary response. Defendants further object to the Request to the extent that it is cumulative of the documents requested in Request 16 and to the extent that it mischaracterizes Defendants' response to Plaintiff's Interrogatory No. 5.

Subject to the foregoing General Objections and Specific Objections, Defendants state that LabCorp's Business Practices Manual and non-privileged documents reflecting LabCorp's procedures and training as referenced in the response to Plaintiff's Interrogatory No. 5 will be made available for inspection at a mutually agreeable date, time and location after the entry of an appropriate protective order by the Court.

REQUEST 24:

Documents and information sufficient to identify any search terms, methodologies, error testing and sampling that were used to prepare your answers to the First Set of Interrogatories not otherwise produced in response to the above Requests.

RESPONSE:

Defendants object to Interrogatory Number 18 on the grounds that the terms "search methodologies," "search terms," "error testing," and "sampling results" are vague and ambiguous. It is also vague and ambiguous with respect to what documents Plaintiff would deem "sufficient to show" the information requested. Defendants further object to this Interrogatory on grounds that it does not seek discoverable information on matters that are relevant or reasonably calculated to lead to the discovery of admissible evidence. Instead it seeks information concerning the process LabCorp undertook, at the direction of counsel in the course of ongoing litigation, to collect information responsive to other Interrogatories which is protected by the attorney-client privilege and/or work product doctrine.

Dated: April 11, 2016

Respectfully submitted,

/s/ Carol A. Licko
Carol A. Licko
Florida Bar No. 435872
carol.licko@hoganlovells.com
James L. VanLandingham
Florida Bar No. 106761
james.vanlandingham@hoganlovells.com
HOGAN LOVELLS US LLP
600 Brickell Avenue, Suite 2700
Miami, FL 33131
Tel: (305) 459-6500
Fax: (305) 459-6550

Steven F. Barley (*pro hac vice*)

Elisabeth S. Walden (*pro hac vice*)
HOGAN LOVELLS US LLP
100 International Drive, Suite 2000
Baltimore, MD 21202
Tel: (410) 659-2700
Fax: (410) 659-2701
steve.barley@hoganlovells.com
elisabeth.walden@hoganlovells.com

Counsel for Defendants Laboratory Corporation of America and Laboratory Corporation of America Holdings

04/11/2016 6:21 PM Electronically Filed: Hillsborough County/13th Judicial Circuit Page 25

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on April 11, 2016, I served the foregoing on counsel for Plaintiff, Christa L. Collins, Esq., Harmon, Woods, Parker & Abrunzo, P.A., clc@harmonwoodslaw.com.

/s/Carol A. Licko

IN THE CIRCUIT COURT OF THE THIRTEENTH JUDICIAL CIRCUIT
IN AND FOR HILLSBOROUGH COUNTY, FLORIDA
CIVIL DIVISION

PATTY DAVIS,
on behalf of herself and
others similarly situated,

Case No. 15-CA-007914

Plaintiff,

v.

LABORATORY CORPORATION
OF AMERICA and LABORATORY
CORPORATION OF AMERICA
HOLDINGS,

Defendants.
_____/

AGREED CONFIDENTIALITY ORDER

The parties to this action, the Plaintiff, PATTY DAVIS, on behalf of herself and others similarly situated, and the Defendants, LABORATORY CORPORATION OF AMERICA and LABORATORY CORPORATION OF AMERICA HOLDINGS, have stipulated to the below terms regarding the production of documents, materials, and information in this action, for the purpose of expediting the flow of discovery material, facilitating the prompt resolution of disputes over confidentiality, and protecting material to be kept confidential, therefore

IT IS HEREBY ORDERED that, the parties having shown good cause for the entry of this Confidentiality Order, which is intended to be a Qualified Protective Order as that term is defined in the Health Insurance Portability and Accountability Act of 1996, specifically 45 C.F.R §§ 164.512(e)(l)(ii)(B) & (e)(1)(v), documents and other information, including the substance and content thereof, may be designated by any party as "Confidential" and produced by that

party in response to any formal or informal request for discovery under the terms of this Confidentiality Order, as set forth below:

1. *Confidential Information*. "Information" includes the contents of documents and other data, any data and information associated with documents (whether physical or in electronic format), oral and written testimony, answers to interrogatories, admissions, and data and information derived from objects other than documents, produced or disclosed in these proceedings by any party in the action or by any third party (the "Producing Party") to any other party or parties, subject to the provisions in Paragraphs 5 and 6 of this Order (the "Receiving Party"). "Information" also includes Protected Health Information as defined in 45 C.F.R. § 160.103 and protected under the Health Insurance Portability and Accountability Act of 1996 and the Health Information Technology for Economic and Clinical Health ("HITECH") Act, and their implementing regulations (collectively, "HIPAA"), which may be considered "Confidential Health Information.". "Confidential Information" includes Confidential Health Information, Confidential Personal Information (as defined *infra*) and any other Information that is or could be designated by a Producing Party as "Confidential" under the terms of this Order.

2. *Confidentiality Designations*. This Order covers Information that the Producing Party designates as "Confidential." Information may be designated as Confidential when the Producing Party reasonably believes that the Information (i) constitutes, reflects, discloses or contains trade secrets, Information subject to protection under the Florida Rules of Civil Procedure, or other proprietary, confidential, non-public information; (ii) constitutes Confidential Health Information; or (iii) constitutes or includes material protected by federal, state, or foreign data protection laws or other privacy obligations, including (but not limited to)

08/23/2016 12:59:33 PM Electronically Filed: Hillsborough County/13th Judicial Circuit. Page 2

consumer and third-party names; Social Security Numbers; health information relating to the past, present or future physical or mental health or condition of an individual; the provision of health care to an individual, or the past, present or future payment for the provision of health care to an individual; driver's license or other identification numbers; personal information such as financial information, tax information, bank account numbers, assets, income, property information, residential property or motor vehicle record information, credit report information, credit card numbers, personal email addresses, insurance claims history, and information provided on applications for insurance coverage ("Confidential Personal Information").

3. *Procedure for Confidentiality Designations.*

(a) *Designation*. To designate Information as Confidential Information, a Producing Party must mark it or identify it on the record as such. A Confidential designation may be withdrawn by the Producing Party.

(b) *Marking*. All or any part of a document, tangible object, discovery response, or pleading disclosed, produced, or filed by a Producing Party may be designated Confidential Information by marking the legend "CONFIDENTIAL" on the face of the document and each page so designated. With respect to tangible items or electronically stored Information produced in native format, the appropriate legend shall be marked on the face of the tangible item, placeholder, or media containing electronically stored Information, if practicable, or by written notice to the Receiving Party at the time of disclosure, production or filing that such tangible item or media is Confidential Information. Nothing in this Order shall be construed as any Receiving Party's consent that Information so designated is, in fact, Confidential.

08/23/2016 12:59:33 PM Electronically Filed: Hillsborough County/13th Judicial Circuit. Page 3

(c) *Redaction*. Any Producing Party may redact Confidential Information, as defined in Paragraph 2, from the documents and things it produces. The Producing Party shall mark each thing where matter has been redacted with a legend stating "REDACTED-CONFIDENTIAL" or a comparable notice. Where a document consists of more than one page, each page on which Information has been redacted shall be so marked. The Producing Party shall preserve an unredacted version of each such document. The process for challenging the designation of redactions shall be the same as the process for challenging the designation of Confidential Information set forth in Paragraph 4, or as otherwise provided in the Florida Rules of Civil Procedure. If Information initially redacted is subsequently produced in unredacted form, either by agreement or Court order, then that unredacted Information may still be designated as Confidential as set forth in Paragraph 2.

(d) *Timing*. Subject to the provisions of Paragraph 9, documents and other objects must be designated as Confidential, and redactions must be applied to Confidential Information, before disclosure. In the event that a Producing Party designates some or all of a witness's deposition testimony as Confidential, the designation must either be made on the record during the deposition, or the specific page and line designations over which confidentiality is claimed must be provided to the Receiving Party within thirty (30) calendar days of receipt of the final transcript. Deposition testimony shall be treated as Confidential pending the deadline.

(e) *Errors*. Disclosure of Confidential Information does not waive the confidential status of such Information. In the event that Confidential Information is disclosed without a marking or designation of it as such due to inadvertence or mistake, the Producing Party may thereafter assert a claim or designation of confidentiality, and promptly provide

08/23/2016 12:59:33 PM Electronically Filed: Hillsborough County/13th Judicial Circuit. Page 4

replacement media. Thereafter, the Receiving Party must return the original Confidential Information and all copies of the same to the Producing Party and make no use of such Information.

4. *Challenges to Confidentiality Designations.* Any party may object to the propriety of the designation of specific material as Confidential at any time, by providing a written objection upon the Producing Party's counsel. The Producing Party or its counsel shall thereafter, within ten (10) calendar days, or at some other reasonable time as agreed by counsel for the parties, respond to such objection in writing by either: (i) agreeing to remove the designation; or (ii) stating specific reasons for such designation. If the objecting party and the Producing Party are subsequently unable to agree upon the terms and conditions of disclosure for the material(s) in issue, the Receiving Party may move the Court for an order, within fourteen (14) calendar days, or at some other reasonable time as agreed by counsel for the parties, seeking disclosure of the disputed Information. On such a motion, the Producing Party shall have the burden of proving that "good cause" exists for the designation at issue and that the material is entitled to protection as Confidential Information under applicable law. In the event a motion is filed, the Information at issue shall continue to be treated in the manner as designated by the Producing Party until the Court orders otherwise. A Receiving Party does not waive its right to challenge a Confidential designation by electing not to raise a challenge promptly after the original designation is disclosed and may challenge a designation at such time as the Receiving Party deems appropriate.

5. *Access to Confidential Information.* The Receiving Party shall not, directly or indirectly, use, disclose, or disseminate, or attempt to use, disclose, or disseminate, any Confidential Information except as expressly provided in this Order. Counsel for the Receiving

08/23/2016 12:59:33 PM Electronically Filed: Hillsborough County/13th Judicial Circuit. Page 5

Party shall be responsible for restricting disclosure of Confidential Material in accordance with the provisions of the Order. The Receiving Party may share Confidential Information with only the following persons and entities:

(a) The Court and its staff;

(b) Parties to this action, and their staff and employees, except that Confidential Health Information shall not be shared with parties unless redacted to exclude personally identifiable information such that the information is considered de-identified in accordance with HIPAA;

(c) Counsel, including in-house counsel, to the parties to this action, and their staff and employees;

(d) Special masters, and their staff and employees;

(e) Mediators and Arbitrators, and their staff and employees, provided such person executes a certification in the form attached hereto as Exhibit A;

(f) Stenographers or court reporters engaged to record proceedings, including depositions, in this action;

(g) Deponents and trial witnesses, who have a reasonable need to see the Confidential Information in order to testify or prepare to testify, provided such witness executes a certification in the form attached hereto as Exhibit A;

(h) Any expert or consultant, and his, her or its staff, hired by a party for litigation purposes who agrees to be bound by this Order and signs the certificate attached hereto as Exhibit A;

(i) Any outside service-providers and consultants regarding document and ESI processing, hosting, review, and production, which includes any eDiscovery consultants

08/23/2016 12:59:33 PM Electronically Filed: Hillsborough County/13th Judicial Circuit. Page 6

and trial consultants, provided such person executes a certification in the form attached hereto as Exhibit A; and

(j) Any other person to whom the Producing Party, in writing, authorizes disclosure.

6. *Use of Confidential Information.*

(a) *Restricted to This Action and Related Litigation.* Confidential Information, including Confidential Health Information may be used or disclosed solely and exclusively to prosecute or defend this action (including any appeal) and shall not be used or disclosed for any other purpose. Confidential Information may be photocopied or otherwise reproduced only as reasonably necessary for this Proceeding. Confidential Information may not be used or disclosed outside this action or to solicit class representatives or named plaintiffs. Confidential Information shall not be disclosed to any unnamed class member or putative class member unless and until this case is certified as a class action and any appeal of a class certification ruling has been fully adjudicated or the time within which to appeal a class certification ruling has expired. If this case is certified as a class action, the members of the putative class will then be parties subject to all provisions of this Confidentiality Order. Confidential Information specifically shall not be used, disclosed, or referred to, directly or indirectly, (a) for any business or competitive purpose, (b) for publicity, (c) in any advertising, or (d) in any material disseminated to any person not authorized to receive such material under the terms hereof, except as set forth in this Confidentiality Order. This Order is not to be construed as placing a restriction on the parties' counsel from prosecuting or defending any other lawsuit, except that Confidential Information subject to this Order may not be used or disclosed in such other lawsuit.

08/23/2016 12:59:33 PM Electronically Filed: Hillsborough County/13th Judicial Circuit. Page 7

(b) *Acknowledgement*. Subject to the restrictions contained in Paragraph 5, the persons identified in Paragraph 5 may receive or review Confidential Information. The persons identified in Paragraphs 5(e), 5(h), 5(i), and 5(j) who may receive or review Confidential Information as provided herein must execute the certificate attached hereto as Exhibit A, except that one person may execute the certificate attached hereto as Exhibit A to bind a single entity, including its employees and staff.

(c) *Filings.* All parties shall make reasonable efforts to avoid requesting the filing of Confidential Information under seal by, for example, redacting or otherwise excluding from a submission to the Court any such Information not directly pertinent to the submission. Where not reasonably possible, any party wishing to file a document or paper containing Confidential Information must comply with the Florida Rules of Civil Procedure and the Florida Rules of Judicial Administration, including Rule 2.420.

(d) *Trial*. The use of Confidential Information during trial shall be determined by subsequent order of the Court or by further agreement of the parties.

(e) *Subpoena by Other Courts or Agencies*. If another court or an administrative agency subpoenas or otherwise orders production of Confidential Information that any party or other person has obtained under the terms of this Order, the party or other person to whom the subpoena or other process is directed must notify the Producing Party in writing, by e-mail to the party's counsel, within seven (7) business days of all of the following: (a) the discovery materials that are requested for production in the subpoena; (b) the date by which compliance with the subpoena is requested; (c) the location at which compliance with the subpoena is requested; (d) the identity of the party serving the subpoena; and (e) the case name, jurisdiction and index, docket, complaint, charge, civil action or other identification number or

08/23/2016 12:59:33 PM Electronically Filed: Hillsborough County/13th Judicial Circuit. Page 8

other designation identifying the litigation, administrative proceeding or other proceeding in which the subpoena or other process has been issued. Confidential Information shall not be produced until the later of (a) seven (7) business days after the dissemination of written notice as described above, or (b) final adjudication of any objection or motion to quash filed by the Producing Party in opposition to the subpoena or other process. The Producing Party will bear the burden and all costs of opposing the subpoena on grounds of confidentiality.

(f) *Safeguards for Confidential Health Information.* Any person who receives and stores Confidential Health Information including Protected Health Information under HIPAA or Confidential Personal Information subject to protection under federal, state or international data protection or privacy laws or regulations in connection with this Proceeding will develop, implement, maintain, and use appropriate administrative, technical, and physical safeguards to preserve the privacy, integrity, and confidentiality of any Confidential Health Information and Confidential Personal Information to prevent non-permitted use or disclosure of such information that they may receive from any person in connection with this Proceeding.

(g) *Use in deposition or Court proceedings.* Nothing in this Order shall prevent the use of Confidential Information, by those entitled to access to that information under the terms of this Order, in the examination or cross-examination of any person who is indicated on the documents as being an author, source, or recipient of the Confidential Information, or the designated representative of any person who testifies on a subject matter that includes the Confidential Information irrespective of the identity of the Producing Party. Confidential Information, or extracts, summaries, or information derived therefrom, retain Confidential status even if used in this proceeding, including at trial. The party using Confidential Information shall take all reasonable steps to maintain confidentiality of the

08/23/2016 12:59:33 PM Electronically Filed: Hillsborough County/13th Judicial Circuit. Page 9

material during such use. If Confidential Information has been marked as such because it contains Confidential Health Information, the parties agree that the party wishing to use the Information at any stage in this proceeding, including in papers filed with the Court, mediation, trial preparation, trial, and appeal, may properly redact the documents pursuant to the HIPAA de-identification standard set forth at 45 C.F.R. § 164.514(b)(2) and in accordance with Paragraph 6 above, and a neutral, non-identifying patient indicator, consistent with 45 C.F.R. § 164.514(c), will be used to refer to the patient in the materials, documents, or information at issue.

7. *Return of Discovery Materials*. Within ninety (90) calendar days of the termination of any party from all proceedings in this action, and of any appeals or upon final disposition of this action, that party, its employees, attorneys, consultants and experts must destroy or return (at the election of the Receiving Party) all originals and copies of documents with Confidential Information, provided however, that the obligation to destroy or return such documents that is imposed on counsel, consultants and experts representing multiple parties shall not occur until the last of their represented parties has been terminated from the foregoing referenced proceedings. At the written request of the Producing Party, any person or entity having custody or control of recordings, notes, memoranda, summaries or other written materials, and all copies thereof, related to or containing discovery materials produced by the Producing Party (the "Discovery Materials") shall deliver to the Producing Party an affidavit certifying that reasonable efforts have been made to assure that all Discovery Materials (except for privileged communications, work product, expert reports reflecting any Confidential Information, and court-filed documents as stated above that are retained in a secure and private location) have been destroyed or delivered to the Producing Party in accordance with the terms

08/23/2016 12:59:33 PM Electronically Filed: Hillsborough County/13th Judicial Circuit. Page 10

of this Confidentiality Order. A Receiving Party is permitted to retain a list of the documents by Bates Number that are produced by a Producing Party under this Confidentiality Order.

8. *No Waiver by Disclosure*. Production pursuant to this Confidentiality Order shall not be deemed a waiver of

(a) any party's right to object to any discovery request on any applicable ground;

(b) any party's right to seek an order compelling discovery with respect to any discovery request;

(c) any party's right to object to the admission of any evidence on any ground in this proceeding;

(d) any party's use and review of its own documents and its own Confidential Information in its sole and complete discretion, except as such use in this action is governed by the Florida Rules of Evidence and the Florida Rules of Civil Procedure; or

(e) the status of any material as trade secret.

9. *Receiving Party's Obligation*. Nothing in this Order shall relieve counsel for any Receiving Party of any existing duty or obligation, whether established by case law, rule of court, regulation or other source, to return, and not to review, any inadvertently produced privileged or work product materials, pursuant to the Florida Rules of Civil Procedure and applicable Florida law.

10. *Non-parties.* Both Parties anticipate that there is a possibility that documents may be requested from third parties or non-party entities that could be likewise protected Confidential Information. To facilitate these requests, no party will be required to obtain the acknowledgement attached as Exhibit A from a non-party prior to requesting information from a

08/23/2016 12:59:33 PM Electronically Filed: Hillsborough County/13th Judicial Circuit. Page 11

non-party, however, if the request is reasonably certain to implicate materials or information of the type protected under this Order, to facilitate the request, the discovery request shall include a copy of this Order and shall instruct the non-party that it may produce documents, data, or other tangible materials under the terms of this Order. Any records obtained from non-parties which contain information designated as Confidential Information shall be maintained as Confidential Information under the terms of this Order. Nothing in this Order will be construed to require a non-party to consent to the terms of this Order.

11. *Violations of the Confidentiality Order by a Receiving Party.* In the event that any person or party violates the terms of this Confidentiality Order, the aggrieved Producing Party may apply to the Court to obtain relief against any such person or party violating or threatening to violate any of the terms of this Confidentiality Order. In the event that the aggrieved Producing Party seeks injunctive relief, it must direct the petition for such relief to the Court. The parties and any other person subject to the terms of this Confidentiality Order agree that this Court shall retain jurisdiction over it and them for the purpose of enforcing this Confidentiality Order.

12. *Violations of the Confidentiality Order by Disclosure of Confidential Personal Information or Confidential Health Information.* In the event that any person or party violates the terms of this Confidentiality Order by disclosing Confidential Personal Information or Confidential Health Information, as defined in Paragraphs 1 and 2 of this Order, or in the event that any person or party breaches the terms of the Confidentiality Order in a manner that requires notification to a third party under pertinent privacy laws or otherwise, it shall be the responsibility of the breaching party to notify the Producing Party about the breach and cooperate with, and comply with the instructions of, the Producing Party in the notification of

08/23/2016 12:59:33 PM Electronically Filed: Hillsborough County/13th Judicial Circuit. Page 12

any individuals or third parties that may be required under applicable laws or regulations involving notification in the event of a breach of Confidential Personal Information or Confidential Health Information.

13. *Confidentiality Order Remains In Force.* This Confidentiality Order shall remain in force and effect until modified, superseded, or terminated by order of the Court made upon reasonable written notice. Unless otherwise ordered, or agreed upon by the parties, this Confidentiality Order shall survive the termination of this action. Neither the termination of this action nor the termination of the employment, engagement, or agency of any person who had access to any Confidential Information shall relieve any person from the obligation of maintaining both the confidentiality and the restrictions on use of any Confidential Information disclosed pursuant to this Confidentiality Order. The Court retains jurisdiction even after termination of this action to enforce this Confidentiality Order and to make such amendments, modifications, deletions and additions to this Confidentiality Order as the Court may, from time to time, deem appropriate.

14. *Modification of Order*. This Order may be modified or amended either by written agreement of the parties, or upon order of the Court and on good cause shown.

DONE AND ORDERED in Chambers, Tampa, Hillsborough County, Florida, this _____ day of _____, 2016.

15-CA-007914 8/23/2016 12:59:21 PM

15-CA-007914 8/23/2016 12:59:21 PM

Circuit Court Judge

Copies furnished to:
Carol A. Licko, Esquire (carol.licko@hoganlovells.com)
Christa L. Collins, Esquire (clc@harmonwoodslaw.com)

08/23/2016 12:59:33 PM Electronically Filed: Hillsborough County/13th Judicial Circuit. Page 13

IN THE CIRCUIT COURT OF THE THIRTEENTH JUDICIAL CIRCUIT
IN AND FOR HILLSBOROUGH COUNTY, FLORIDA
CIVIL DIVISION

PATTY DAVIS,
on behalf of herself and
others similarly situated,

Case No. 15-CA-007914

Plaintiff,

v.

LABORATORY CORPORATION
OF AMERICA and LABORATORY
CORPORATION OF AMERICA
HOLDINGS,
Defendants.
_____/

AGREEMENT TO BE BOUND BY CONFIDENTIALITY ORDER

1. I am familiar with and agree to be bound by the terms of the Confidentiality Order in Case No. 15-CA-007914, *Patty Davis v. Laboratory Corporation of America and Laboratory Corporation of America Holdings*. I understand that my execution of this Agreement to be bound by the Confidentiality Order, indicating my agreement to be bound by the Confidentiality Order, is a prerequisite to my access or review of any information or documents designated as Confidential pursuant to the Confidentiality Order.

2. I will only make such copies of or notes concerning Confidential Information as are necessary to enable me to render the assistance required in connection with this litigation. Upon the final determination of this action, I shall promptly return, destroy or delete all Confidential Information provided to me, as well as any notes or derivations thereof. I understand that my obligation to honor the confidentiality of such material will continue even after this Proceeding concludes.

3. I understand that all Confidential Health Information, as defined in the Confidentiality Order, is subject to state and federal statutory and regulatory privacy and security standards, including, but not limited to, the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), the Health Information Technology for Economic and Clinical Health Act of 2009 (the "HITECH Act"), and regulations adopted thereunder by the U.S. Department of Health and Human Services, 45 C.F.R. Parts 160, 162, and 164 (the "HIPAA Rules"). All

EXHIBIT "A"

Confidential Information disclosed by any party or non-party to this Proceeding that contains Confidential Health Information shall be treated in accordance with those standards, as applicable. Capitalized terms used, but not otherwise defined in this agreement, shall have the same meanings as those terms in HIPAA Rules.

4. By executing this Agreement to be Bound by Confidentiality Order, I agree that I (a) will not use or disclose any Confidential Health Information in a manner that would violate the HIPAA Rules; (b) will not use or disclose any Confidential Personal Information in a manner that would violate individual privacy; and (c) will only use or disclose any Confidential Information for the purpose of this proceeding or to comply with judicial process or any applicable statute or regulation. I also agree that I will develop, implement, maintain, and use appropriate administrative, technical and physical safeguards to preserve the privacy, integrity, and confidentiality of any Confidential Information, and to prevent non-permitted use or disclosure of any Confidential Information I receive from any person in connection with this proceeding.

5. I understand that failure to comply with the terms of the Confidentiality Order may be punishable by contempt of Court and may result in civil liability to any party or person damaged thereby. I consent to the jurisdiction of the Circuit Court of the Thirteenth Judicial Circuit in and for Hillsborough County, Florida (without any time limit) for the purpose of enforcing the Confidentiality Order.

DATED this ___ day of _____, 20__.

BY: _____

_____
(Print Name)

Affiliation: _____
Address: _____

EXHIBIT "A"

IN THE CIRCUIT COURT OF THE THIRTEENTH JUDICIAL CIRCUIT
IN AND FOR HILLSBOROUGH COUNTY, FLORIDA
CIVIL DIVISION

PATTY DAVIS, on behalf of herself and others similarly situated, Plaintiff, v. LABORATORY CORPORATION OF AMERICA and LABORATORY CORPORATION OF AMERICA HOLDINGS, Defendants.	Case No. 15-CA-007914

DEFENDANTS' MOTION FOR JUDGMENT ON THE PLEADINGS

Pursuant to Florida Rule of Civil Procedure 1.140(c), Defendants Laboratory Corporation of America and Laboratory Corporation of America Holdings (collectively, "LabCorp"), respectfully request that the Court dismiss this case for lack of subject matter jurisdiction. Jurisdiction over issues arising out of the Florida Workers' Compensation Law, Fla. Stat. §§ 440.01 through 440.60, (the "Act"), including matters related to billing for services provided under the Act, is vested exclusively in the Florida Department of Financial Services. LabCorp further requests that this action be dismissed for the additional reason that there is no private right of action for violations of Section 440.13(13), Fla. Stat.

INTRODUCTION

Plaintiff alleges LabCorp sent her two medical bills for services LabCorp provided to her when, pursuant to the Act, Fla. Stat § 440.13(13), those bills should have been sent to Plaintiff's employer's workers' compensation insurer. *See* Compl. at ¶¶ 11-18. Plaintiff purports to bring

this action on behalf of herself and a class of similarly situated individuals,[1] and seeks injunctive relief, declaratory relief, and money damages.

The predicate for Plaintiff's claim is that the alleged billing was a violation of Florida's Workers' Compensation Law. Compl. ¶¶ 8, 10, 19. But Plaintiff has no cause of action in this Court for alleged violations of the Act because injured workers have no right to sue under the Act's remedial scheme. In an effort to evade the Act's abridgment of injured workers' right to sue, Plaintiff reframes her claim as an alleged violation of a wholly different statute, the Florida Consumer Collection Practices Act ("FCCPA"). *See* Compl. at ¶¶ 19–45. Her purported FCCPA claim, however, is explicitly based and wholly dependent on her allegation that LabCorp's bills to Plaintiff violated Florida's Workers' Compensation Law. Compl. at ¶ 18. For the reasons that follow, this Court lacks jurisdiction to adjudicate alleged violations of the Workers' Compensation Law, and Plaintiff's cause of action is barred by Florida law.

MEMORANDUM OF LAW

I. This Court Lacks Jurisdiction to Adjudicate Alleged Violations of the Workers' Compensation Law, Enforcement of Which is Vested Exclusively with the Florida Department of Financial Services.

Florida statutes, administrative rules, and judicial opinions all concur that the jurisdiction to adjudicate disputes that enforce the Workers' Compensation Law is not vested in Florida's Article V Courts, but is solely and exclusively vested in the state administrative agencies empowered under the Act. "All Article V courts that have been presented with the issue of subject matter jurisdiction to adjudicate disputes involving workers' compensation matters have

[1] Plaintiff alleges the existence of some sort of widespread, systematic billing of injured workers, Compl. ¶ 9, but she has not identified a single person besides herself who alleges they were wrongfully billed by LabCorp. Plaintiff's Complaint does not even allege that she knows any such person exists. Rather Plaintiff speculates that, given the nature of LabCorp's business, such a person must exist. Compl. ¶ 27. This speculation is insufficient for any good-faith allegation of the existence of a class.

12/28/2016 1:53 PM Electronically Filed: Hillsborough County/13th Judicial Circuit Page 2

uniformly held in very broad, general, and generic terms that Article V courts have *no* subject matter jurisdiction to adjudicate disputes involving workers' compensation issues. *Sanders v. City of Orlando*, 997 So. 2d 1089, 1093 (Fla. 2008) (emphasis added). "All Article V courts have placed **exclusive subject matter jurisdiction** for such disputes within the workers' compensation proceedings." *Id.* "These cases present a vast variety of disputed matters touching upon issues within the workers' compensation context and uniformly reject subject matter jurisdiction of worker compensation disputes." *Id*.

The Legislature enacted Florida Workers' Compensation Law with the intent to create an "efficient and self-executing" system that "is not an economic or administrative burden" to "assure the quick and efficient delivery of disability and medical benefits to an injured worker and to facilitate the worker's return to gainful reemployment at a reasonable cost to the employer." Fla. Stat. § 440.015. To "facilitate[] the self-execution of the system and the process of ensuring a prompt and cost-effective delivery of payments," the Legislature vested administration of the Law with the Department [of Financial Services], Agency [for Health Care Administration], the Office of Insurance Regulation, and the Division of Administrative Hearings . . . ." *Id.*[2]

Importantly, in order for the system to be efficient and cost-effective, it is "based on a mutual renunciation of common-law rights and defenses by employers and employees alike." Fla. Stat. § 440.015.[3] Indeed, "Every employer and employee . . . shall be bound by the

[2] *See also* Fla. Stat. § 440.44(2), which directs that "to ensure that the system operates efficiently and with maximum benefit to both employers and employees," it is the "intent of the Legislature that the Department, the Agency, and the Division of Administrative Hearings assume an active and forceful role in its administration of this act."

[3] Among other things, an injured worker gives up any common-law claims he or she may have had against an employer for injuries sustained during the course and scope of employment (§ 440.11); an employer is immune from non-intentional acts resulting in injuries to employees (§§

12/28/2016 1:53 PM Electronically Filed: Hillsborough County/13th Judicial Circuit Page 3

provisions" of the Act. Fla. Stat. § 440.03.[4] The Act is not simply applicable in the employer-employee setting, but likewise applies to and is binding upon health care providers — such as LabCorp — who provide care and/or treatment to injured employees:

> **By accepting payment under this chapter for treatment rendered to an injured employee, a health care provider consents to the jurisdiction of the department** as set forth in subsection (11) and to the submission of all records and other information concerning such treatment to the department in connection with a reimbursement dispute, audit, or review as provided by this section. **The health care provider must further agree to comply with any decision of the department** rendered under this section.

Fla. Stat. § 440.13(3)(f) (emphasis added). By participating in the care of injured workers, health care providers agree to a fee schedule for services provided, are required to use standardized forms approved by the Department to document diagnoses, treatment, and plans of care for employees, and are required to comply with other administrative rules and requirements of the Department. *See generally*, Fla. Stat. § 440.13 *et seq*. And, as Plaintiff alleges, the Act dictates that "[a] health care provider may not collect or receive a fee from an injured employee within the state, except as otherwise provided by this chapter." Fla. Stat. § 440.13(13).

Sole responsibility for investigating and adjudicating alleged violations of the Act that relate to providers' billing practice and procedures for care provided under the Act is vested exclusively with the Department of Financial Services. "The department has **exclusive jurisdiction**" to decide and resolve any matters concerning reimbursement, or disputes under

---

440.10 and 440.11); the Act modifies the burden of proof (§ 440.09); the Act has its own statute of limitations (§ 440.12); the Act modifies the statutory physician-patient privilege (§ 440.13(4)); the Act alters the rules of procedure and evidence (§ 440.29); and the Act limits the amount of attorneys' fees available to attorneys representing injured workers (§ 440.34).

[4] Plaintiff specifically acknowledges that the services she received from LabCorp arose under the Act. *See* Compl. ¶ 13.

subsections (7) or (8). Fla. Stat. § 440.13(11)(c) (emphasis added).[5] Further, "[t]he department may investigate health care providers to determine whether providers are . . . engaging in improper billing practices, and whether providers are adhering to practice parameters and protocols established in accordance with this chapter." Fla. Stat. § 440.13(11)(a).

Thus, the remedy for Plaintiff's allegations of improper billing practices lies with the Department of Financial Services, which has exclusive jurisdiction over the matter. Department rules specifically define "collecting or receiving payment from an injured worker in violation of Section 440.13(13)(a). . . or failing to properly bill medical services" as a "**violation**" of the Workers' Compensation Law. Rule 69L-34.001 (emphasis added). Department rules further provide injured workers with a reporting procedure to address allegations of improper billing practices, under which the aggrieved injured worker is directed to submit to the Division's Office of Medical Services the precise types of evidence that Plaintiff proposes to advance before this Court. Rule 69L-34.003(4). Specifically, the rules provide for submission of a form along with "supportive documentation of a specific **violation**" which "may include: (i) copies of collection letters sent to the injured worker from the Provider or a collection agent acting on behalf of the Provider seeking payment for covered medical services authorized by the Carrier." Rule 69L-

[5] Subsection 8 provides:

> If the department determines that a healthcare provider has engaged in a pattern of practice of overutilization **or a violation of this chapter or rules adopted by the department**, including a pattern or practice of providing treatment in excess of the practice parameters or protocols of treatment, it may impose one or more of the following penalties:
>
> 1. An order barring the provider from payment under this chapter;
> 2. Deauthorization of care under review;
> 3. Denial of payment for care rendered in the future;
> 4. An administrative fine of $5,000.00; and
> 5. Notification of and review by the appropriate licensing authority pursuant to s. 440.106(3).

Fla. Stat. § 440.13(8) (emphasis added).

34.003(4)(i) (emphasis added). *See also Golden v. Maynard Coach & Truck Lines, Inc.*, 2007 Fla. Wrk. Comp. LEXIS 6162, *3-4 (J.C.C. Dec. 18, 2007) (ordering that provider reimbursement should not be collected from employee and that attempts to do so may subject the provider to Department penalties and fines).

Plaintiff's effort to transform her Workers' Compensation dispute into a sweeping class-action lawsuit is improper. To ensure that the Act is administered efficiently and cost-effectively, the Legislature has imposed a duty on "**all who participate in the workers' compensation system, including**, but not limited to, carriers, services providers, **health care providers**, attorneys, employers, managed care arrangements, **and employees**, to attempt to resolve disagreements between the parties." Fla. Stat. § 440.191(1)(a). Pursuant to this statutory directive, the Department adopted mandatory dispute resolution procedures requiring that "[a]n injured worker or any other party to a dispute involving a workers' compensation issue **shall** contact and request assistance from the [Employee Assistance Office ("EAO") of the Department's Division of Workers' Compensation], and make good faith effort to participate in the informal dispute resolution proceedings of the EAO." Rule 69L-26.004(1), Fla. Admin. Code.

Plaintiff has never sought to resolve this alleged dispute by engaging in this mandatory alternative dispute resolution process. Instead, she immediately filed this purported class action lawsuit for alleged violations of Florida's Workers' Compensation Law. But, because Florida's Article V courts lack jurisdiction to adjudicate alleged violations of the Workers' Compensation Law, which is exclusively reserved to the administration of the Department, Plaintiff's lawsuit must be dismissed.

II. There Is No Private Right of Action For Violation of Section 440.13(13), Fla. Stat., And Plaintiff Cannot Create One By Claiming Such a Violation is Actionable Under the FCCPA.

Dissatisfied with the remedial scheme provided by Florida's Workers' Compensation Law, Plaintiff attempts to reframe her claim for an alleged violation of that Act as one for an alleged violation of the FCCPA. Compl. ¶¶19–45. Regardless of styling, though, her claim is explicitly and entirely dependent on her contention that LabCorp violated Florida's Workers' Compensation Law. Compl. ¶ 18. As the Workers' Compensation Law affords her no private right of action, Plaintiff seeks to end-run the law by bootstrapping alleged billing violations of that Act to a nominal FCCPA claim. Research discloses no instance in which a Florida court has ever held that a violation of the Workers' Compensation Law may function as a predicate for an FCCPA violation. Florida courts instead consistently reject attempts by imaginative plaintiffs to convert allegations of pure regulatory violations into civil claims seeking damages for purported violations of other laws.

Under Florida law, "legislative intent . . . should be the primary factor considered by a court in determining whether a cause of action exists" under a statute, and there is no right of action absent a "legislative intent to create a private remedy . . . ." *Murthy v. N. Sinha Corp.*, 644 So. 2d 983, 985 (Fla. 1994) (holding that party's failure to meet statutory duty imposed by Chapter 489, Florida Statutes [regulating building contractors] "does not give rise to a private cause of action."). In *Murthy*, the plaintiff argued that regulations mandated by statute "impose a duty . . . and a violation of that duty constitutes negligence per se or at least evidence of negligence sufficient to send the cause to a jury." *Id.* The Florida Supreme Court, however, "declin[ed] to infer any civil liability as there is no evidence in the language or legislative history of chapter 489 of a legislative intent to create a private remedy."

Other courts interpreting Florida law have consistently rejected similar attempts by plaintiffs to impose civil liability predicated on violation of statutes that do not create a private right of action. *See, e.g., Wilson v. Danek Med., Inc.*, No. 96-2460, 1999 WL 1062129, at *6 (M.D. Fla. March 29, 1999) ("Under Florida law, . . . Plaintiff cannot use a negligence per se claim to create a private cause of action for Defendant's alleged violations of [a statute]"); *Jupiter Inlet Corp. v. Brocard*, 546 So. 2d 1, 2-3 (Fla. 4th DCA 1988) (holding that evidence of Occupational Safety and Health Act ("OSHA") violations "is not evidence of negligence per se" and that "OSHA does not provide the basis for a private right of action").

Likewise, violation of a statute without a private right of action cannot form the predicate for a separate statutory cause of action in a manner contrary to legislative intent. *See Hucke v. Kubra Data Transfer Ltd., Corp.*, 160 F. Supp. 3d 1320, 1328 (S.D. Fla. 2015) (holding that a consumer's claim that utility company charged him a surcharge to pay his bill with a credit card in violation of Florida's Money Transmitter Statute could not serve as predicate for a claim under the Florida Deceptive and Unfair Trade Practices Act ("FDUTPA") because the Money Transmitter Statute did not provide for a private right of action and there was no evidence the Legislature intended for it to form the predicate for a FDUTPA claim).

Here, Plaintiff's Complaint improperly attempts to circumvent the Legislature's intent not to create a private right of action for alleged violations of Section 440.13(13) of Florida's Workers' Compensation Law by reframing an allegation that a violation of that very statute is a violation of wholly a different statute. Florida's Workers' Compensation Law does not create a private right of action for the purported violation that Plaintiff alleges and, as discussed above, Article V courts lack subject matter jurisdiction to hear such disputes. *Sanders v. City Of*

12/28/2016 1:53 PM Electronically Filed: Hillsborough County/13th Judicial Circuit Page 8

Orlando, 997 So. 2d 1089, 1093 (Fla. 2008). These principles should not be ceded to artful pleading.

The Florida Legislature has made plain its intent that the Workers' Compensation Law not create a private right of action arising out of healthcare provider billing disputes, instead vesting enforcement of provider billing obligations exclusively with the Florida Department of Financial Services. *See, e.g.*, Section 440.13(11)(c), Fla. Stat. ("The [Department of Financial Services] has **exclusive jurisdiction** to decide matters concerning reimbursement . . . .") (emphasis added); Section 440.13(8), Fla. Stat. ("If the [Department of Financial Services] determines that a healthcare provider has engaged in a pattern or practice of over utilization or a violation of this chapter . . . it may impose certain penalties."). Indeed, in promulgating the Workers' Compensation Law, the Legislature specifically stated its intent to create "an efficient and self-executing system" that is "based on a mutual renunciation of common-law rights and defenses by employers and employees alike." Section 440.015, Fla. Stat.

In this case, Plaintiff is attempting to sue LabCorp for its alleged violation of Section 440.13(13). Compl. ¶¶ 19-21. Plaintiff's attempt to manufacture a private right action where one does not exist is contrary to law and the Legislature's clear intent in enacting the Workers' Compensation system as a statutory scheme. Because both Plaintiff's individual and putative class claims rest on the alleged violation of Section 440.13(13) of the Workers' Compensation Law for which she has no private right of action, her case must be dismissed.

WHEREFORE, Defendants Laboratory Corporation of America and Laboratory Corporation of America Holdings respectfully request that this Honorable Court dismiss Plaintiff's lawsuit in its entirety.

Dated: December 28, 2016

Respectfully submitted,

/s/ Carol A. Licko

Carol A. Licko
Florida Bar No. 435872
carol.licko@hoganlovells.com
James L. VanLandingham
Florida Bar No. 106761
james.vanlandingham@hoganlovells.com
HOGAN LOVELLS US LLP
600 Brickell Avenue, Suite 2700
Miami, FL 33131
Tel: (305) 459-6500
Fax: (305) 459-6550

Steven F. Barley (*pro hac vice*)
Elisabeth S. Walden (*pro hac vice*)
HOGAN LOVELLS US LLP
100 International Drive, Suite 2000
Baltimore, MD 21202
Tel: (410) 659-2700
Fax: (410) 659-2701
steve.barley@hoganlovells.com
elisabeth.walden@hoganlovells.com

Counsel for Defendants Laboratory Corporation of America and Laboratory Corporation of America Holdings

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on December 28, 2016, I filed the foregoing Motion for Judgment on the Pleadings via the Florida E-Filing Portal, which will serve an electronic copy of same to counsel for plaintiff, Christa L. Collins, Esq., Harmon, Woods, Parker & Abrunzo, P.A., clc@harmonwoodslaw.com.

/s/ Carol A. Licko

Filing # 51565154 E-Filed 01/24/2017 03:02:26 PM

IN THE CIRCUIT COURT OF THE THIRTEENTH JUDICIAL CIRCUIT
IN AND FOR HILLSBOROUGH COUNTY, FLORIDA, CIVIL DIVISION

PATTY DAVIS,
on behalf of herself and others
similarly situated,

Plaintiff,
v.

LABORATORY CORPORATION OF AMERICA, and LABORATORY CORPORATION OF AMERICA HOLDINGS,
Defendants.
_____/

CASE NO.: 15-CA-007914

DIVISION: A

CLASS REPRESENTATION

PLAINTIFF'S RESPONSE IN OPPOSITION TO DEFENDANTS' MOTION FOR JUDGMENT ON THE PLEADINGS

Plaintiff, PATTY DAVIS, an individual consumer, on behalf of herself and others similarly situated, through her undersigned counsel, hereby files this response in opposition to *Defendants' Motion for Judgment on the Pleadings*, and states that the Defendants' motion, which argues that this Court lacks subject matter jurisdiction because there is no private right of action under the Florida Consumer Collection Practices Act ("FCCPA") for any matters that are related to the Workers' Compensation Law, should be denied for the following reasons:

A. **Defendants' interpretation of the Workers' Compensation Law is incorrect, citing statutory language out of context.** Defendants' arguments regarding the interplay of subsections 440.13(11)(c) and 440.13(8) are incorrect and do not follow recognized principles of statutory interpretation. Similarly, the statutory preconditions for alternative dispute resolution or assistance with the EAO are not met in this case.

B. **Defendants' arguments misapprehend the nature of the FCCPA.** The FCCPA is designed to provide a remedy for a separate and distinct type of harm to a consumer, over and above the type of harm that Workers' Compensation Law addresses. In this case, the Workers' Compensation Law provides the basis for the underlying wrongfulness of the Defendants' conduct.

01/24/2017 3:02 PM Electronically Filed: Hillsborough County/13th Judicial Circuit Page 1

C. **Defendants ask this Court to improperly insert an exception into the FCCPA.** The plain language of the FCCPA does not contain an exception for claims arising out of billing between a medical provider and a claimant under the Workers' Compensation Law.

D. **The Workers' Compensation Law does not preempt the FCCPA.** The plain language of the Workers' Compensation Law contains no exception preempting the FCCPA. The Workers' Compensation Law does not govern the entire relationship between an injured employee and a medical provider, nor does it preempt any other causes of action for subsequent harms inflicted on the employee by the medical provider.

E. **Dismissal of Count I for Declaratory Judgment is improper.** The Declaratory Judgment Act includes its own grant of jurisdiction.

At the most basic level, Defendants' requested relief requires willfully ignoring that the FCCPA expressly creates a private right of action against any person[1] who attempts to collect a debt when there is no legal right to do so.[2] This case arises out of the Defendants' attempts to collect money from the Plaintiff and class members when those collection attempts are not permitted under Florida law. In that situation, the Workers' Compensation Law merely provides the legal basis for the allegation that Defendants did not have a legal right to attempt to collect from the Plaintiff or the class members. To buttress their disregard of the FCCPA, Defendants have cobbled together portions of the Workers Compensation Law, out of context, in an attempt to read into the statute what the Legislature did not include.

Each of the specific arguments why Defendants' motion should be denied will be discussed in turn:

---

[1] "The word 'person' includes individuals, children, firms, associations, joint adventures, partnerships, estates, trusts, business trusts, syndicates, fiduciaries, corporations, and all other groups or combinations." §1.01(3), Fla. Stat. (2016). Similarly, the enacting language of the FCCPA, bears the following title:

> AN ACT relating to the regulation of consumer collection practices; providing definitions; providing for licensing, fees, and bonding of collection agencies; providing standards governing the issuance of collection agency licenses; Providing for prohibited practices applicable to persons generally . . ..'

Williams v. Streeps Music Co., Inc., 333 So. 2d 65, 67 fn.2, (Fla. 4th DCA 1976) (Emphasis added) (citing Chapter 72-81, Laws of Florida 1972 (codified as ss 559.55-559.78, F.S.)).

[2] §559.72(9), Fla. Stat. (2016).

01/24/2017 3:02 PM Electronically Filed: Hillsborough County/13th Judicial Circuit Page 2

A. **Defendants' interpretation of the Workers' Compensation Law is incorrect, citing statutory language out of context.**

Defendants' motion is premised on its interpretation of the Workers' Compensation Law to conclude that "'[t]he department has **exclusive jurisdiction**' to decide and resolve any matters concerning reimbursement, or disputes under subsections (7) or (8)." Motion, pages 4 and 5, citing §440.13(11)(c). This argument takes the relevant statutory language completely out of context, shifting and conflating the language of Florida Statutes §440.13(8)(b) and §440.13(11)(c) to reach the conclusion that exclusive jurisdiction for this dispute lies with the Department of Financial Services. The plain language of the statute simply does not stretch to the conclusion the Defendants reach.

Next, Defendants' suggestion that the dispute between the Defendants, as medical providers, and the Plaintiff, as an injured employee, should have been submitted to alternative dispute resolution through the Employee Assistance and Ombudsman Office ("EAO"), is unsupported by the language of the statute enabling the EAO.

1. **The plain language of the Workers' Compensation Law does not support Defendants' arguments.**

As with any question of statutory interpretation, the exact language of the statute is of key importance. The first of the two statutory subsections relied upon by the Defendants, the subsection granting exclusive jurisdiction to the Department, section 440.13(11), provides:

> (11) INVESTIGATION; MONITORING; JURISDICTION.—
>
> (a) The department may investigate health care providers to determine whether providers are complying with this chapter and with rules adopted by the department, whether the providers are engaging in overutilization, whether providers are engaging in improper billing practices, and whether providers are adhering to practice parameters and protocols established in accordance with this chapter. **If the department finds that a health care provider has improperly billed, overutilized, or failed to comply with department rules or the requirements of this chapter, including, but not limited to, practice parameters and protocols established in accordance with this chapter,** it

must notify the provider of its findings and may determine that the health care provider may not receive payment from the carrier or **may impose penalties as set forth in subsection (8) or other sections of this chapter.** If the health care provider has received payment from a carrier for services that were improperly billed, that constitute overutilization, or that were outside practice parameters or protocols established in accordance with this chapter, it must return those payments to the carrier. The department may assess a penalty not to exceed $500 for each overpayment that is not refunded within 30 days after notification of overpayment by the department or carrier.

(b) The department shall monitor carriers as provided in this chapter.

(c) The department has exclusive jurisdiction to decide any matters concerning reimbursement, to resolve any overutilization dispute under subsection (7), *and to decide any question concerning overutilization under subsection (8)*, which question or dispute arises after January 1, 1994.

§440.13(11), Fla. Stat. (2014) (emphasis added). In turn, section 440.13(8), referenced in subsection (11)(c), states:

(8) PATTERN OR PRACTICE OF OVERUTILIZATION.—

(a) Carriers must report to the department all instances of overutilization ....The department shall determine whether a pattern or practice of overutilization exists.

(b) **If the department determines that a health care provider has engaged in a pattern or practice of overutilization *or a violation of this chapter or rules adopted by the department*, including a pattern or practice of providing treatment in excess of the practice parameters or protocols of treatment,** it may impose one or more of the following penalties:...

§440.13(8), Fla. Stat. (2014) (emphasis added). Notably, section 440.13(11)(c) does not contain the broad language argued by the Defendants. The statute does not grant exclusive jurisdiction over all disputes under sections (7) and (8) to the Department.

Defendants' motion argues that the exclusive jurisdiction provisions in subsection 11(c) apply to give the Department exclusive jurisdiction - not just over issues of "overutilization" as the statute specifies - but other wrongful conduct of a healthcare provider, including the conduct at issue in this litigation. More specifically, Defendants' argument improperly bootstraps into 11(c) the conduct that is addressed in 8(b), which falls within Department's **permissive** ability to

01/24/2017 3:02 PM Electronically Filed: Hillsborough County/13th Judicial Circuit Page 4

penalize **violations of the chapter or rules**. This result, incorporating all of subsection 8(b), and by extension all violations of the chapter or rules, into the exclusive jurisdiction provisions of 11(c), does not apply the plain language of the statute and violates several principles of statutory construction.

Instead of being a broad grant of jurisdiction to the Department, the plain language of §440.13(11)(c) lists three distinct, and limited, circumstances where the Department has exclusive jurisdiction: (i)[3] over matters concerning reimbursement, (ii) to resolve any overutilization dispute under subsection (7), and (iii) to decide any question concerning overutilization under subsection (8). By definition, this case is not one concerning reimbursement, because it is not a dispute between a health care provider and a carrier.[4] It is not an overutilization dispute described in subsection (7). It is also not an overutilization dispute under subsection (8). Subsection 11(c) should not even come into play in this dispute between an injured employee/patient and a health care provider.

Defendants' arguments step around these definitional facts by reaching out to subsection (8)(b) to incorporate the words "a violation of this chapter or rules adopted by the department" into the third category of exclusive jurisdiction, which states that the Department has exclusive jurisdiction "to decide any question concerning overutilization under subsection (8)."[5] The fallacy of this interpretation is that subsection 11(c) does not provide exclusive jurisdiction for "any question under subsection (8)," as advocated by the Defendants. The Defendants'

---

[3] This numbering is not in the statutory language, but is added here for clarity.
[4] See also §440.13(1)(q) ("'Reimbursement dispute' means any disagreement between a health care provider or health care facility and carrier concerning payment for medical treatment."). By definition, a "reimbursement dispute" is one between a medical provider and a carrier, not a dispute between providers and employees for the independently wrongful conduct of the medical provider. Other subsections apply this definition to make clear that a reimbursement or utilization dispute does not involve the injured employee. §440.13(7), Fla. Stat. (2014). By definition, a utilization or reimbursement dispute over which the department has jurisdiction can only be between a medical provider and an insurance carrier.
[5] §440.13(11)(c), Fla. Stat. (2014).

01/24/2017 3:02 PM Electronically Filed: Hillsborough County/13th Judicial Circuit Page 5

arguments render the words "concerning overutilization" in the third part of subsection 11(c) superfluous. This violates the principles of statutory interpretation.[6]

The Defendants' interpretation also ignores the principle of *expressio unius est exclusio alterius* - that is, "the mention of one thing implies the exclusion of another."[7] By specifically listing three circumstances where the Department has exclusive jurisdiction, the Legislature limited that exclusivity only to those three circumstances, and none others.

If Defendants were correct, and all of 8(b) were properly brought into the exclusive jurisdiction provisions of 11(c), that interpretation would fail to give meaning to the other parts of subsection (11), which explain that the Department **may** investigate or monitor health care providers for compliance with the workers compensation rules and regulations. §440.13(11)(a) and (b), Fla. Stat. (2014). The Legislature did allow the Department to punish the Defendants' conduct, but only on a permissive and non-exclusive basis.

The practical result of the Defendants' arguments inserts new and additional provisions into the Workers Compensation Law, including section 440.11. This section, entitled "Exclusiveness of Liability," contains two provisions limiting the rights of an injured employee, addressing only (1) questions of liability between the employee and the employer, or (2) claims between the employee and the insurance carrier.[8] Other statutory provisions explain that the Workers Compensation law is designed to regulate the relationship only between employers and

[6] Hawkins v. Ford Motor Co., 748 So. 2d 993, 1000 (Fla. 1999) ("Statutory interpretations that render statutory provisions superfluous 'are, and should be, disfavored.'") (citing Johnson v. Feder, 485 So.2d 409, 411 (Fla.1986)).
[7] Moonlit Waters Apartments, Inc. v. Cauley, 666 So. 2d 898, 900 (Fla. 1996).
[8] §440.11(1), Fla. Stat. (2014) ("The liability of an employer prescribed in s. 440.10 shall be exclusive and in place of all other liability, including vicarious liability, of such employer to any third-party tortfeasor and to the employee..."); §440.11(4), Fla. Stat. (2014) ("Notwithstanding the provisions of s. 624.155, the liability of a carrier to an employee or to anyone entitled to bring suit in the name of the employee shall be as provided in this chapter, which shall be exclusive and in place of all other liability.").

01/24/2017 3:02 PM Electronically Filed: Hillsborough County/13th Judicial Circuit Page 6

employees.[9] At no point did the Florida Legislature enact a provision within the Workers Compensation Law that wholly and completely regulates the relationship between and injured patient and a health care provider. Dismissal of Plaintiff's complaint would silently add new language to the exclusiveness of liability provisions by including medical providers, even though the words are not in the statute.[10]

Finally, Defendants have provided no case law supporting their statutory interpretation. In their motion, they make one parenthetical reference to a single case,[11] which does not actually support the idea that anything touching on a billing dispute is under the exclusive jurisdiction of the Department. In Golden v. Maynard Coach & Truck Lines, Inc., the dispute was over whether the injuries suffered by the employee were compensable. The Judge of Compensation Claims ("JCC"), rather than AHCA ("the Department'), JCC made a determination that there was an employer-employee relationship, and therefore the injuries sustained were compensable under the Workers' Compensation Law. Id. at *2. It was not an adjudication of a dispute between a medical provider and the injured employee. Ultimately, the JCC's ruling was that the employer, who was a party in the proceedings, was responsible for payment.[12] This result provides no guidance in the instant dispute, because it does not address a circumstance anything like the one before this court: a dispute between a medical provider and an injured employee-claimant, where compensability is not at issue, and the employer-carrier had authorized treatment, and was ready to make payment if the medical provider had sent it the bill.

---

[9] §440.44(2) ("It is the intent of the Legislature that... the system operates efficiently and with maximum benefit to both employers and employees."); §440.03 ("Every employer and employee as defined in s. 440.02 shall be bound by the provisions of this chapter.").
[10] Martin v. Johnston, 79 So. 2d 419, 420 (Fla. 1955) ("[W]e are not authorized to depart from the literal terms of the statute."); Hunt v. State Farm Florida Ins. Co., 112 So. 3d 547, 550 (Fla. 2d DCA 2013) ("We are hesitant to impose a requirement beyond that directed by the legislature.").
[11] Leslie Golden v. Maynard Coach & Truck Lines, Inc., No.:06-021546, 2007 WL 4661947 (Dec. 18, 2007).
[12] Id. at *2.

01/24/2017 3:02 PM Electronically Filed: Hillsborough County/13th Judicial Circuit Page 7

2. This claim does not require resolution through the Employee Assistance and Ombudsman Office ("EAO").

Beginning on page 6 of their motion, Defendants make an argument suggesting that this action should have proceeded under a form of alternative dispute resolution authorized under the rules of the Department. Again, this argument ignores the express statutory language of the Workers' Compensation Law. The conditions under which an employee is obligated to contact the Employee Assistance and Ombudsman Office ("EAO") are outlined in the statute, in a portion conveniently not cited by the Defendants:

> If at any time the employer or its carrier fails to provide benefits to which the employee believes she or he is entitled, the employee shall contact the office to request assistance in resolving the dispute. The office may review a petition for benefits filed under s. 440.192 and may attempt to facilitate an agreement between the employee and the employer or carrier. The employee, the employer, and the carrier shall cooperate with the office and shall timely provide the office with any documents or other information that it may require in connection with its efforts under this section.

§ 440.191 (2)(a), Fla. Stat. (2014) (emphasis added). See also Fla. Admin. Code Ann. R. 69L-26.004(3) ("The EAO shall, if requested to do so by an injured worker,... or a health care provider that has provided authorized treatment to an injured worker when an employer or carrier fails or refuses to pay for the authorized treatment, complete a Request for Assistance form (EAO-1) for or on behalf of the party so requesting."). This circumstance triggering the involvement of the EAO -- the employer or its carrier failing to provide benefits -- did not occur in Plaintiff's case. Plaintiff therefore was not obligated to proceed with any alternative dispute resolution processes under the Workers' Compensation Law.

B. Defendants' arguments misapprehend the nature of the FCCPA.

Defendants' arguments fundamentally require the conclusion that the FCCPA is preempted by the Workers' Compensation Law. This position ignores both the express statutory

01/24/2017 3:02 PM Electronically Filed: Hillsborough County/13th Judicial Circuit Page 8

language and the stated purposes of the FCCPA. The FCCPA is designed to remedy a separate and distinct type of harm to members of the public than is protected by the Workers' Compensation Law.[13] It is intended to be "construed in a manner that is protective of the consumer."[14] The fact that a medical provider may, permissively under section 440.13(11)(a), be subjected to penalties under the Workers' Compensation Law does not eliminate the need for or validity of an FCCPA claim.

Shortly after the enactment of the FCCPA, while ruling that the FCCPA was not an unconstitutional denial of due process, the Florida Supreme Court explained that

> It clearly appears to have been the intent of the Legislature to provide a remedy for a class of injury where damages are difficult to prove and at the same time provide a penalty to dissuade parties such as Beneficial from engaging in collection practices which may have been heretofore tolerated industrywide. Neither objective is without the purview of proper legislative action. The Consumer Collection Practices Act is a laudable legislative attempt to curb what the Legislature evidently found to be a series of abuses in the area of debtor-creditor relations. The legislation provided neither criminal penalties nor administrative enforcement. The minimum damage award and the civil suits it encourages constitute the only means by which the legislative purpose may be vindicated. We decline to strip the CCPA of the only self-enforcing mechanism it possesses.[15]

The damages and penalties imposed by the FCCPA redress the separate harm occurring by improper collection practices.[16] For example, civil damages awards for violations of the FCCPA are not merely offset from the debt owed, but are imposed both for their deterrence effect in eliminating abusive practices and to protect the rights of the consumer.[17] By extension, an injured employee who received treatment under the Workers' Compensation Law that is also

[13] Harris v. Beneficial Fin. Co. of Jacksonville, 338 So. 2d 196 (Fla. 1976).
[14] Laughlin v. Household Bank, Ltd., 969 So. 2d 509, 512 (Fla. 1st DCA 2007).
[15] Harris, 338 So. 2d at 200–01 (Fla. 1976) (emphasis added).
[16] Id.
[17] In re Runyan, 530 B.R. 801, 808–09 (Bankr. M.D. Fla. 2015).

harmed by the subsequent conduct of a debt collector still retains the rights conferred upon them by the FCCPA.

Both the plain language of the FCCPA and Florida Supreme Court precedent show that the relevant statute establishing Plaintiff's cause of action in this matter is the FCCPA, which expressly creates a private or civil cause of action. Section 559.77(1), the section within the FCCPA entitled "Civil Remedies," specifically states that

> (1) A debtor may bring a civil action against a person violating the provisions of s. 559.72 in the county in which the alleged violator resides or has his or her principal place of business or in the county where the alleged violation occurred.[18]

Section 559.72, in turn, provides that

> In collecting consumer debts, no person shall.... (9) claim, attempt, or threaten to enforce a debt when such person knows that the debt is not legitimate, or assert the existence of some other legal right when such person knows that the right does not exist.[19]

Applying the unambiguous language of these statutes, it is clear that the Florida legislature intended to create a private right of action when any person violates the Act or subjects a consumer to any of the prohibited practices listed in §559.72. In this case, the violation of section 559.72(9) of the FCCPA is predicated on the existence or non-existence of a legal right -- not the question of whether another statute permits a different remedy for a violation of that right. The Workers' Compensation Law merely provides the basis for the allegation that the Defendants attempted to collect a debt that was not legitimate. The fact that a governmental agency may also be permitted to impose penalties for the same conduct does not eliminate the existence of the right of action under the FCCPA.

Defendants attempt address this argument in section II, beginning on page 7, of their

[18] §559.77(1), Fla. Stat. (2014).
[19] §559.72(1), Fla. Stat. (2014).

01/24/2017 3:02 PM Electronically Filed: Hillsborough County/13th Judicial Circuit Page 10

Motion. In doing so, they rely on Murthy v. N. Sinha Corp., 644 So. 2d 983 (Fla. 1994) for the proposition that legislative intent is the primary factor in considering where a private right of action may exist. While this is an accurate statement of the result of Murthy, it simply does not help the Defendants in this case. Murthy holds that regulatory or penal statutes, standing alone, do not provide for a civil cause of action.[20] The Supreme Court directed that legislative intent was "the primary factor considered by a court in determining whether a cause of action exists when a statute does not expressly provide for one."[21] Because the instant case is brought under the FCCPA, applying Murthy, this Court must look to the FCCPA to see if that statute creates a private or civil cause of action. It does, as described above.[22] Applying the plain language of these statutes, it is clear that the Florida legislature intended to create a private right of action when any person violates the Act or subjects a consumer to any of the prohibited practices listed in §559.72.[23] Murthy therefore undermines the Defendants' arguments and supports the Plaintiffs' position.

Defendants then rely on several cases to suggest that civil liability cannot be imposed when premised on statutes that do not provide for a private right of action. Motion, page 8. Not only does this argument continue to ignore the express language of the FCCPA provisions at issue, none of the cases cited support Defendants' position. Defendants first cite to Wilson v. Danek Med., Inc.,[24] where Judge Kovachevich addressed the plaintiffs' attempt to bring a negligence per se claim under the Food, Drug, and Cosmetic Act. In an analysis that does not help the Defendants here, she held that the "FDCA expressly prohibits private claims for violations of that statute, 21 U.S.C. § 337(a), strongly evidencing a legislative intent *not* to create

[20] Murthy, 644 So. 2d at 985.
[21] Id.
[22] See § 559.77(1), Fla. Stat. (2014); §559.72(9), Fla. Stat. (2014).
[23] Murthy, 644 So. 2d at 985.
[24] 96-2460-CIV-T-17B, 1999 WL 1062129, at *6 (M.D. Fla. Mar. 29, 1999).

01/24/2017 3:02 PM Electronically Filed: Hillsborough County/13th Judicial Circuit Page 11

a private cause of action."[25] Here, the reverse is true. The FCCPA expressly creates a private right of action.

The case of Jupiter Inlet Corp. v. Brocard[26] likewise does not support the Defendants arguments. In that case, the holding was that evidence of violations of OSHA regulations could be admissible as evidence of negligence, rather than dispositive as negligence per se.[27] In reaching this conclusion, the Fourth District noted that "OSHA does not provide the basis for a private right of action."[28] Because the Plaintiff here is not bringing a claim premised on OSHA violations, Brocard provides little or no guidance to the questions before this Court.

Finally, Hucke v. Kubra Data Transfer Ltd. Corp.[29] is also entirely inapplicable to this matter. It addresses a case brought under the Florida Unfair Trade Practices Act (FDUPTA), which has different elements of its cause of action. Based on the specific language of FDUPTA, another statute may serve as a predicate for a FDUPTA claim only if it expressly states that it does, or if the statute proscribes unfair and deceptive trade practices.[30] The FCCPA does not have any such restriction.

Contrary to the case law cited by Defendants, other courts that have considered arguments almost identical to the one presented by the Defendants have rejected those arguments. In an FCCPA case, Kaplan v. Assetcare, Inc., the defendant attacked the FCCPA claim because there was no private right of action under the statutory provision that rendered the debt illegitimate, arguing that the Plaintiff was trying to "manufacture" a cause of action by relying on the FCCPA.[31] The court rejected this argument outright, pointing out that there is no

---

[25] Id.
[26] 546 So. 2d 1 (Fla. 4th DCA 1988)
[27] Id. at 2-3.
[28] Id. at 2.
[29] 160 F.Supp.3d 1320 (U.S. Dist. Ct. S.D. Fla. 2015)
[30] Hucke, 160 F.Supp.3d at 1328.
[31] Kaplan v. Assetcare, Inc., 88 F. Supp. 2d 1355, 1362-63 (S.D. Fla. 2000).

01/24/2017 3:02 PM Electronically Filed: Hillsborough County/13th Judicial Circuit Page 12

case law supporting the defendant's position.[32] The court held that

> A plain reading of Fla. Stat. § 559.72(9) indicates that it prohibits enforcement of a debt when a person knows the debt is *not legitimate* or asserts the existence of a *legal right* that is known not to exist. The statute appears to contemplate reliance on the legal status of a debt, and thus the consideration of whether other sections of the statutory code have been violated. Defendants' argument that a lack of a private right of action in the insurance code prohibits an FCCPA action is therefore unconvincing.[33]

The Eleventh Circuit Court of Appeals came to a similar conclusion regarding the nature of consumer rights and debt collection statutes, holding that "[t]o determine whether a debt is legitimate or whether a legal right exists, courts must refer to other statutes that establish the legitimacy of a debt and define legal rights."[34] Plaintiff's Complaint does just that by referring to the Workers' Compensation Law.

Secondary legal sources also recognize the viability of a cause of action under the FCCPA for the exact type of conduct undertaken by the Defendants. The exact situation presented by this case was identified as a "representative claim" that health care providers must learn to avoid. Anthony J. Palermo, Doctors As Debt Collectors? Healthcare Providers and the Florida Consumer Collection Practices Act, 67 Fla. L. Rev. F. 105, 113 (2016). A copy of this article is attached as **Exhibit A.** Plaintiffs' cause of action in this case is undoubtedly authorized by the FCCPA.

C. Defendants ask this Court to improperly insert an exception into the FCCPA.

Notably, Defendants have not cited any statutory language from the FCCPA in support of its arguments that the Plaintiff must proceed only under the Workers Compensation Law. The reason for this failure is that the FCCPA unequivocally authorizes the Plaintiff's claims.

---

[32] Id. at 1363.
[33] Id. (emphasis in original).
[34] Cliff v. Payco Gen. Am. Credits, Inc., 363 F.3d 1113, 1126 (11th Cir. 2004).

01/24/2017 3:02 PM Electronically Filed: Hillsborough County/13th Judicial Circuit Page 13

Defendants' arguments invite this Court to alter the language of the FCCPA and include new and additional statutory language creating exception for debts arising out of medical treatment provided under the Workers' Compensation Law.

The FCCPA applies broadly to "all allegedly unlawful attempts at collecting consumer claims" by "any person."[35] The Act does not include exceptions that would serve the purpose the Defendants now argue, such as for "any persons except medical providers" or for "any debt except those for treatment under the Workers' Compensation Law." Without such an exception or exclusion in the statutes, this Court cannot insert that language into the FCCPA.[36]

This Court is therefore bound to apply the plain language of the FCCPA.[37] The plain language of the FCCPA means that it applies to any person who violates §559.72, without exception for claims arising out of workers' compensation medical treatment.

D. The Workers' Compensation Law does not preempt the FCCPA.

Defendants' arguments presuppose that the Workers' Compensation Law provides the exclusive remedy for all matters relating to billing presumes that the Workers' Compensation Law preempts all other causes of action, including those arising subsequent to treatment rendered under the terms of the Workers' Compensation Law. This argument is wholly unsupported. Defendant has not cited any cases holding that a FCCPA cause of action is preempted by the Workers' Compensation Law, nor have they cited any workers' compensation case holding that

---

[35] Williams v. Streeps Music Co., Inc., 333 So. 2d 65, 67 (Fla. 4th DCA 1976); Gann v. BAC Home Loans Servicing LP, 145 So. 3d 906, 910 (Fla. 2d DCA 2014) (relying on Schauer v. Gen. Motors Acceptance Corp., 819 So.2d 809, 812 (Fla. 4th DCA 2002)).

[36] Martin v. Johnston, 79 So. 2d 419, 420 (Fla. 1955) ("[W]e are not authorized to depart from the literal terms of the statute."); Hunt v. State Farm Florida Ins. Co., 112 So. 3d 547, 550 (Fla. 2d DCA 2013) ("We are hesitant to impose a requirement beyond that directed by the legislature."); Bd. of Trustees of Orlando Police Pension Plan v. Langford, 833 So. 2d 230, 234 (Fla. 5th DCA 2002) ("We are bound by the plain language of the statute and special act."); State v. Nourse, 340 So. 2d 966, 969 (Fla. 3d DCA 1976) ("[U]nless the right to the exception is clearly apparent in the statute, no benefits thereunder will be permitted.").

[37] Sanders v. City Of Orlando, 997 So. 2d 1089, 1095 (Fla. 2008), as revised on denial of reh'g (Dec. 18, 2008) (citing State v. Egan, 287 So.2d 1, 4 (Fla.1973) ("Where the legislative intent as evidenced by a statute is *plain and unambiguous,* then there is no necessity for any construction or interpretation of the statute, and the courts need only *give effect to the plain meaning of its terms.*") (emphasis supplied)).

01/24/2017 3:02 PM Electronically Filed: Hillsborough County/13th Judicial Circuit Page 14

causes of action arising out of collection practices by a medical provider for treatment under the Workers' Compensation Law are preempted. In short, there is nothing about the Workers' Compensation Law that eliminates any expressly authorized causes of action between the injured employee and the medical provider arising after medical treatment and benefits had promptly been delivered to the employee.

The statute comprising the Workers' Compensation Law do not say anything about eliminating causes of action for separate harms accruing subsequent to the workplace injury or about eliminating claims against entities other than the employer, such as the instant FCCPA claim against a medical provider. If Defendant's arguments were correct, an injured employee would not be permitted to bring any other claims touching on a compensable workplace injury. For example, an injured employee retains the right to bring a claim against a third-party tortfeasor, even if the injury was work related.[38] An injured employee also may bring a claim for malpractice against a medical provider for treatment arising out of a workplace injury.[39] The claims in this case, much like a medical malpractice claim, address a subsequent, separate harm to the injured employee.

Instead of extending blindly to everything even tangentially related to compensable a workplace injury, as argued by the Defendants, there are statutory provisions of the Workers' Compensation Law that affirmatively state where other causes of action may be limited. Other than §440.13(11), with its own limited extension of jurisdiction to the Department, these provisions extend only to jurisdiction over claims for liability between the employee and the

[38] Am. Mut. Ins. Co. v. Decker, 518 So. 2d 315, 317 (Fla. 2d DCA 1987), approved sub nom. Schneider v. Underwriters Adjusting Co., 530 So. 2d 59 (Fla. 1988).
[39] Pyles v. Bridges, 259 So. 2d 724, 725 (Fla. 2d DCA 1972) ("[T]he doctors and hospital rendering services to an injured employee under the Workmen's Compensation Act do not share in the immunity afforded the employer.").

01/24/2017 3:02 PM Electronically Filed: Hillsborough County/13th Judicial Circuit Page 15

employer, or to claims between the employee and the insurance carrier.[40] In fact, the provisions of the Workers Compensation Law touching on the relationship between a medical provider and an injured employer expressly do not eliminate any other causes of action.[41] The only exceptions or alterations to the employee's rights are those listed in the statute. No others can be imposed by this Court.[42]

E. Dismissal is improper under the Declaratory Judgment Act.

Defendants' motion also ignores that the Plaintiff's Complaint contains two counts: one for declaratory and injunctive relief under the Florida Declaratory Judgment Act, Chapter 86; and the second for violations of the Florida Consumer Collection Practices Act, §559.72(9).

The Declaratory Judgment Act confers jurisdiction on this Court "to declare rights, status, and other equitable or legal relations whether or not further relief is or could be claimed."[43] The Declaratory Judgment Act is "substantive and remedial. Its purpose is to settle and to afford relief from insecurity and uncertainty with respect to rights, status, and other equitable or legal relations and is to be liberally administered and construed."[44] Dismissal of Count II would be improper in light of the broad purposes of the Declaratory Judgment Act.

---

[40] §440.11(1), Fla. Stat. (2016) ("The liability of an employer prescribed in s. 440.10 shall be exclusive and in place of all other liability, including vicarious liability, of such employer to any third-party tortfeasor and to the employee..."); §440.11(4), Fla. Stat. (2016) ("Notwithstanding the provisions of s. 624.155, the liability of a carrier to an employee or to anyone entitled to bring suit in the name of the employee shall be as provided in this chapter, which shall be exclusive and in place of all other liability."); §440.44(2) ("It is the intent of the Legislature that... the system operates efficiently and with maximum benefit to both employers and employees."); §440.03 ("Every employer and employee as defined in s. 440.02 shall be bound by the provisions of this chapter.").

[41] See § 440.13(4), Fla. Stat. (2014) (limiting the amount a medical provider may charge for records); §440.13(4)(b), Fla. Stat. (2014) (authorizing a medical provider to share information about the injured employer, without regard to the physician-patient privilege §440.13(4)(c)).

[42] Williams v. Am. Sur. Co. of N.Y., 99 So. 2d 877, 880 (Fla. 2d DCA 1958) ("Where a statute sets forth exceptions, no others may be implied to be intended."); Le Scampi Condo. Ass'n, Inc. v. Hall, 200 So. 3d 187, 190 (Fla. 2d DCA 2016) ("Under the principle of statutory construction, expressio unius est exclusio alterius, the mention of one thing implies the exclusion of another.") (citing Moonlit Waters Apartments, Inc. v. Cauley, 666 So.2d 898, 900 (Fla. 1996)).

[43] §86.011, Fla. Stat. (2016).

[44] §86.101, Fla. Stat. (2016).

01/24/2017 3:02 PM Electronically Filed: Hillsborough County/13th Judicial Circuit Page 16

F. Conclusion

While it cannot be disputed that the Defendants' conduct in this case was a violation of the Workers' Compensation Law and the rules implementing those statutes,[45] the Plaintiff's cause of action under the FCCPA has not been preempted or eliminated. This case is simply not a workers' compensation dispute. Even if it were, the Workers' Compensation Law does not explicitly override or preempt the rights granted to the Plaintiff through the Florida Consumer Collection Practices Act. This case is a consumer debt collection practices dispute, seeking a remedy for harm done to the Plaintiff and the class members separate from their compensable workplace injuries, where the Workers'' Compensation Law provides the underlying basis for the wrongfulness of the Defendants' acts.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the undersigned counsel electronically filed the foregoing using the Florida ePortal filing system that will generate a Notice of Electronic Filing to the following at their designated email addresses, on this 24th day of January, 2017.

Carol A. Licko
Florida Bar No. 435872
James L. VanLandingham
Florida Bar No. 106761
HOGAN LOVELLS US LLP
600 Brickell Avenue, Suite 2700
Miami, FL 33131
Email: carol.licko@hoganlovells.com; james.vanlandingham@hoganlovells.com

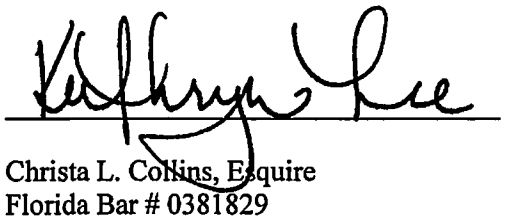
Steven F. Barley, Esquire
Elizabeth S. Walden, Esquire

[45] F.A.C. R. 69L-34.001(6).

01/24/2017 3:02 PM Electronically Filed: Hillsborough County/13th Judicial Circuit Page 17

Hogan Lovells US LLP
100 International Drive, Suite 200
Baltimore, MD 21202
Email: steven.barley@hoganlovells.com; elisabeth.walden@hoganlovells.com
[Attorneys for Laboratory Corporation of America and Laboratory Corporation of America Holdings]

Respectfully submitted,



Christa L. Collins, Esquire
Florida Bar # 0381829
Email: service.clc@harmonwoodslaw.com;
clc@harmonwoodslaw.com
Kathryn Lee, Esquire
Florida Bar #0675660
Email: service.kl@harmonwoodslaw.com;
kl@harmonwoodslaw.com
Harmon, Woods, Parker & Abrunzo, P.A.
110 North 11th Street, 2nd Floor
Tampa, Florida 33602
Telephone: (813) 864-1762
Facsimile: (813) 222-3616

Counsel for Plaintiff

01/24/2017 3:02 PM Electronically Filed: Hillsborough County/13th Judicial Circuit Page 18

IN THE CIRCUIT COURT OF THE THIRTEENTH JUDICIAL CIRCUIT
IN AND FOR HILLSBOROUGH COUNTY, FLORIDA, CIVIL DIVISION

PATTY DAVIS,
on behalf of herself and others
similarly situated,

Plaintiff,

v.

LABORATORY CORPORATION OF AMERICA, and LABORATORY CORPORATION OF AMERICA HOLDINGS,

Defendants.
_____/

CASE NO.: 15-CA-007914

DIVISION: A

CLASS REPRESENTATION

PLAINTIFF'S NOTICE OF FILING EXHIBIT "A" TO PLAINTIFF'S RESPONSE IN OPPOSITION TO DEFENDANTS' MOTION FOR JUDGMENT ON THE PLEADINGS

Plaintiff, PATTY DAVIS, an individual consumer, on behalf of herself and others similarly situated, through her undersigned counsel, hereby gives notice of filing this Exhibit A to PLAINTIFF'S RESPONSE IN OPPOSITION TO DEFENDANTS' MOTION FOR JUDGMENT ON THE PLEADINGS, which was inadvertently omitted, and for any other purposes permitted under the Florida Rules of Civil Procedure.

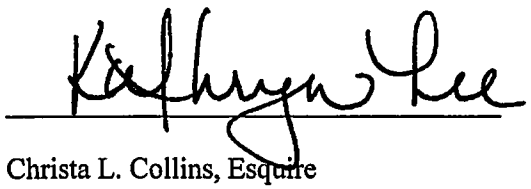
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the undersigned counsel electronically filed the foregoing using the Florida ePortal filing system that will generate a Notice of Electronic Filing to the following at their designated email addresses, on this 24th day of January, 2017.

Carol A. Licko
Florida Bar No. 435872
James L. VanLandingham
Florida Bar No. 106761
HOGAN LOVELLS US LLP
600 Brickell Avenue, Suite 2700
Miami, FL 33131
Email: carol.licko@hoganlovells.com; james.vanlandingham@hoganlovells.com

Steven F. Barley, Esquire
Elizabeth S. Walden, Esquire
Hogan Lovells US LLP
100 International Drive, Suite 200
Baltimore, MD 21202
Email: steven.barley@hoganlovells.com; elisabeth.walden@hoganlovells.com
[Attorneys for Laboratory Corporation of America and Laboratory Corporation of America Holdings]

Respectfully submitted,



Christa L. Collins, Esquire
Florida Bar # 0381829
Email: service.clc@harmonwoodslaw.com;
clc@harmonwoodslaw.com
Kathryn Lee, Esquire
Florida Bar #0675660
Email: service.kl@harmonwoodslaw.com;
kl@harmonwoodslaw.com
Harmon, Woods, Parker & Abrunzo, P.A.
110 North 11th Street, 2nd Floor
Tampa, Florida 33602
Telephone: (813) 864-1762
Facsimile: (813) 222-3616

Counsel for Plaintiff

67 Fla. L. Rev. F. 105

Florida Law Review Forum
2016

DOCTORS AS DEBT COLLECTORS? HEALTHCARE PROVIDERS AND THE FLORIDA CONSUMER COLLECTION PRACTICES ACT

Anthony J. Palermo[a1]

Copyright © 2016 Florida Law Review; Anthony J. Palermo

INTRODUCTION

Beginning in the 1960s, state legislatures across the country enacted consumer protection acts that "were originally designed to supplement the Federal Trade Commission's (FTC) mission of protecting consumers from 'unfair or deceptive acts or practices' and are referred to as 'Little-FTC Acts.'"[1] As the area of consumer collection continues to grow in Florida, various healthcare providers are finding themselves subject to or threatened with a lawsuit for alleged violations of the Florida Consumer Collection Practices Act (FCCPA) and its federal counterpart, the Fair Debt Collection Practices Act (FDCPA), as well as the Telephone Consumer Protection Act (TCPA).[2] Communications with patients--often sent in accordance with collection policies and procedures, patient agreements, form patient statements, dunning messages, and collection agency contracts--are becoming vehicles for consumer collection claims and exposing healthcare providers to liability. Healthcare providers should become familiar with Florida's consumer collection laws and implement strategies to increase compliance with and decrease exposure under the FCCPA, FDCPA, and the TCPA.

CONSUMER COLLECTION LAWS IN FLORIDA: PROHIBITIONS, DAMAGES, AND DEFENSES

The FCCPA, FDCPA, and the TCPA aim to prohibit various conduct related to debt collection and provide for civil penalties for violations thereof. Violations can prove costly as the FCCPA and FDCPA contain provisions that provide for the award of court costs and attorneys' fees for prevailing parties, and liability under TCPA can reach up to $500 *per violation.* The FCCPA, FDCPA, and the TCPA allow defendants to raise affirmative defenses based upon their internal policies and procedures designed to safeguard against violations, but in the face of exposure to costly claims, relying solely upon such defenses in litigation is a risky proposition.

*106 *Florida Consumer Collection Practices Act & Fair Debt Collection Practices Act*

The FCCPA and FDCPA were enacted with similar goals, and the FCCPA requires courts interpreting and applying its provisions to give "due consideration and great weight" to federal case law construing the FDCPA.[3] The "purpose and intent of the FCCPA, like the FDCPA, is to eliminate abusive and harassing tactics in the collection of debts."[4] The FCCPA and FDCPA prohibit any person or debt collector,[5] *in collecting consumer debts,* from engaging in the following practices:

1. claiming, attempting, or threating to enforce a debt with knowledge that the debt is not legitimate, or asserting the existence of some other legal right with knowledge that the right does not exist;[6]
2. willfully communicating with a debtor or his or her family with such frequency as can reasonably be expected to harass, or willfully engaging in other conduct that can reasonably be expected to abuse or harass;[7]
3. communicating with a debtor whom the person knows is represented by counsel with respect to the debt, unless the debtors initiates the communication;[8]
4. communicating with a debtor after the debtor notifies the person in writing that the debtor refuses to

WESTLAW © 2016 Thomson Reuters. No claim to original U.S. Government Works.

EXHIBIT A

pay the debt or the debtor requests that the person cease further communicating with the debtor;[9]
5. using or threatening force or violence, or using *107 profane, obscene, vulgar, or abusive language;[10]
6. simulating law enforcement, a representative of a government agency, an attorney or affiliate of one, or the legal or judicial process in writing or orally;[11]
7. telling a debtor who disputes a debt that the person will disclose information affecting the debtor's reputation for creditworthiness without also disclosing that the debt is disputed by the debtor, or disclosing information to others about the existence of a debt known to be disputed without disclosing that the debtor disputes it;[12]
8. communicating or threatening to communicate with a debtor's employer;[13]
9. communicating with anyone other than the debtor, the debtor's attorney, or a consumer reporting agency,[14] or disclosing information to someone other than the debtor or his or his family that affects the debtor's reputation, whether or not for creditworthiness, with knowledge or reason to know that the information is false or that the recipient does not have a business need for the information;[15]
10. falsely representing the character, amount, or legal status of a debt, or the services rendered or compensation that may be received by the person for collecting the debt, or using any other false or deceptive means to attempt to collect a debt or information about a debtor;[16]
*108 11. communicating with a debtor between 9 p.m. and 8 a.m. without prior consent,[17] or causing a debtor to be charged for a communication by concealing its purpose;[18]
12. advertising or threatening to advertise for sale any debt to enforce payment;[19]
13. publishing, posting, or threatening to publish or post to the public the name(s) of debtors,[20] or mailing communications in an envelope or postcard that has writing on the outside of it that is "calculated to embarrass [a] debtor";[21] and,
14. refusing to identify one's self, one's employer, or the entity that one otherwise represents or acts on behalf of when requested to do so by a debtor.[22]

The first prohibited practice set forth above--asserting a legal right that one knows does not exist or claiming a debt that one knows is not legitimate--has proven to be one of the most problematic for many clients. In determining whether a debt is legitimate or whether a legal right was misrepresented pursuant to section 559.72(9) of the FCCPA, courts must refer to other statutes that define legal rights and establish the legitimacy of debts.[23] Courts have interpreted this provision broadly to incorporate a wide array of other laws, such that the following actions could trigger liability under the FCCPA:

• attempting to collect payment from a patient for services covered by an HMO;[24]
*109 • sending a bill to a patient with knowledge that it would be covered by patient's workers' compensation insurer;[25]
• claiming the right to deny hearing request and garnish wages to collect a debt in violation of statutory requirements regarding garnishment;[26]
• attempting to collect a debt with knowledge that the debtor has filed for bankruptcy, *e.g.*, hospital sending a patient a bill despite a bankruptcy notice being previously mailed to the hospital;[27]
• "attempt[ing] to collect postjudgment interest in an amount greater than the statutory rate";[28] and,
• attempting to collect a debt that has already been paid, *e.g.*, hospital sending letters to collect from patient on a bill that patient and her insurance company had paid.[29]

The second prohibited practice set forth above--abusing or harassing a debtor or his or her family--has also generated a significant amount of claims. Courts have not given clear guidance on the parameters of what conduct is prohibited, and instead evaluate the context of each alleged violation presented. As one federal court interpreting Florida law announced: "There is no exact formula or checklist to determine whether a communication is abusive or harassing in nature; rather, to violate the statue, the behavior must be evaluated as a whole under the circumstances."[30]

*110 *Telephone Consumer Protection Act*

The TCPA prohibits:

1. using an automatic telephone dialing system to make calls (other than for emergency purposes or with prior, express consent) to an emergency phone line, to a guest or patient room at a hospital, health care facility, elderly home, or similar establishment, or to a cell phone, paging service, or any service

01/24/2017 3:39 PM Electronically Filed: Hillsborough County/13th Judicial Circuit Page 4

for which the recipient of the call is charged;[31]

2. calling a residential phone using an artificial or prerecorded voice without prior, express consent unless for emergency purposes;[32] and,

3. using a fax machine, computer, or other device to send an unsolicited advertisement to a fax machine, unless the sender has an established business relationship with the recipient or the recipient made its fax number available for public distribution.[33]

Damages and Attorneys' Fees

Any person who fails to comply with the FCCPA or FDCPA "is liable for actual damages [sustained by the plaintiff] and for additional statutory damages as [a] court may allow, but not exceeding $1,000, together with court costs and reasonable attorney's fees incurred by the plaintiff."[34] In contrast to the prevailing party attorneys' fees available to plaintiffs, courts may only penalize plaintiffs for their FCCPA claims when such claims lack merit--not merely when they are unsuccessful. According to the FCCPA: "*If* the court finds that *the suit fails to raise a justiciable issue of law or fact*, the plaintiff is liable for court costs and reasonable attorney's fees incurred by the defendant."[35]

Any person who violates the TCPA is liable for actual monetary loss caused by the violation, or $500 *per violation*, whichever is greater.[36] Additionally, if a court finds that a defendant willfully or knowingly violated the TCPA, the court may increase the award of damages up to three times the amount otherwise available.[37]

*111 *Defenses*

In addition to rebutting factual allegations that would otherwise give rise to liability, the FCCPA and FDCPA provide another defense: "[a] person may not be held liable ... if the person shows by a preponderance of the evidence that the violation was not intentional and resulted from a bona fide error, notwithstanding the maintenance of procedures reasonably adapted to avoid such error."[38] Similarly, the TCPA allows a defendant to raise the affirmative defense that "the defendant has established and implemented, with due care, reasonable practices and procedures to effectively prevent telephone solicitations" that violate the TCPA.[39]

THE RISE OF CONSUMER COLLECTION CLAIMS AND PLAINTIFF'S COUNSEL AS REPEAT PLAYERS

The potential reward of attorneys' fees for a prevailing party looms over collection related claims under the FCCPA and FDCPA. This statutory incentive has birthed a cottage industry of consumer collection litigation in Florida, which--coupled with law firms designed for high-volume practices and bolstered by advertising--leads to those not traditionally thought of as debt collectors, such as health care providers, becoming subject to consumer collection claims.

Attorneys' Fees as an Incentive for Plaintiffs--and Mutual Deterrent

Because the FCCPA requires a defendant to pay the attorneys' fees of a prevailing plaintiff, and further litigating and defending against an action increases a plaintiff's attorneys' fees, prudent healthcare providers should attempt to resolve claims promptly unless the facts clearly do not expose the doctor or hospital to liability under the FCCPA or FDCPA. Litigating close factual questions is an increasingly risky proposition with mounting attorneys' fees.[40]

In practice, defense counsel often deal with the same plaintiffs' firms prosecuting FCCPA, FDCPA, and TCPA claims. Often, plaintiff's counsel will dismiss a case if apprised of its weaknesses upon defendant's investigation of the facts and averment of same to plaintiff's counsel. To *112 proceed otherwise, based upon only a plaintiff's recollection in the face of defendant's corporate records, could subject a plaintiff to costly defense counsel fees. Resolving these claims fairly and efficiently is in both parties' interests.

Rapport and Reputation: Informal Defenses and Deterrents

01/24/2017 3:39 PM Electronically Filed: Hillsborough County/13th Judicial Circuit Page 5

Providers should vigilantly hire counsel who will not antagonize plaintiff's counsel by either unnecessarily litigating claims in which factual investigation reveals defendant bears liability or by litigating--or engaging in settlement communications--in an overly aggressive manner. In the course of their repeat dealings in addressing consumer collection claims, not only will plaintiff and defense counsel build a rapport, plaintiff's counsel will often learn which defendants simply factor settlements into their bottom lines as operating costs and which take compliance seriously to avoid consumer collection claim exposure. By monitoring and continually enhancing its compliance program, a healthcare provider will keep business costs down by reducing the litigation expense involved in defending these claims.

In addition to retaining professional defense counsel, providers should establish and maintain strong compliance programs, which will in turn develop the provider's reputation as an entity that makes an unattractive target for consumer collection claims--one that could come with a hefty attorneys' fee award if the claim is belied by the compliant company's corporate records.

No compliance regime, however, is perfect. Even the best processes will not prevent a business from receiving demand letters or occasional lawsuits, as *bona fide* errors are inevitable and statutory attorneys' fees provisions incentivize claims. Even so, reputational deterrence is possible and a provider committed to complying will reap benefits. Once strong compliance and monitoring processes are in place, defense counsel is able respond to lawsuits and demand letters by proffering evidence demonstrating compliance efforts as well as facts that negate a plaintiff's allegations. As a result, plaintiffs' counsel will be more likely to reevaluate their claims against particular providers going forward and should be less likely to rush to file or threaten suit. Once opposing counsel becomes aware that the provider takes these laws seriously and has gone to great lengths to curb violations, the provider will be better prepared to resolve claims early on and will have ready defenses to claims that do go forward.

Thus, not only would effective compliance policies and procedures result in a decreased volume of claims and less exposure to liability, they would also enhance a provider's ability to defend against claims if and when they do arise. Enhancing one's compliance and monitoring policies and procedures also increases a provider's ability to effectively negotiate ***113** with opposing counsel when such claims arise. And, although establishing that a violation was an unintentional, *bona fide* error, which occurred in spite of procedures adopted to avoid such errors, may not summarily resolve an existing claim,[41] this defense does provide an additional barrier to liability if a claim goes to trial.

Common Consumer Collection Claims

Among the more common consumer collection claims are the first three items set forth above under the FCCPA and the first under the TCPA: (1) willfully abusing or harassing a debtor (usually through frequent calls); (2) knowingly asserting an illegitimate debt or legal right that does not exist; (3) contacting a debtor represented by an attorney when you know of the representation; and (4) using an auto-dialer to call a debtor's cell phone. Notably, these claims arise in various fora. Counsel for a bankruptcy trustee may file suit on a debtor's behalf in federal bankruptcy court, plaintiff's counsel may file suit in county or circuit state court, or plaintiff's counsel may send a health care provider a demand letter directly.

Representative Claims

In order to highlight reoccurring issues for which this article will include remedial recommendations below, the following provides an overview of a few sample claims asserted against a health care provider, their statutory bases, and the underlying factual allegations.

1. **FCCPA, Fla. Stat. § 559.72(7)--abuse/harassment** (multiple calls to debtor's cell phone after debtor told to stop calling and could not pay, and to debtor's place of employment after told not allowed to call there).

2. **FCCPA, Fla. Stat. § 559.72(9)--illegitimate debt/legal right** (communicating via letter in an attempt to collect illegitimate debt and urging patient to contact health care provider after receiving notice of patient's bankruptcy, including by sending an account statement).

3. **FCCPA, Fla. Stat. § 559.72(9)--illegitimate debt/legal right** (sending patient an ***114** invoice/statement when provider knew services provided should have been billed to/paid for by

01/24/2017 3:39 PM Electronically Filed: Hillsborough County/13th Judicial Circuit Page 6

workers' compensation insurer after provider received email from workers compensation insurer explaining it would be responsible for care).

4. **FCCPA, Fla. Stat. § 559.72(18)--represented by attorney** (communicating directly via letter, and *indirectly* via letter sent by collection agency, with patient after receiving notice that patient retained legal counsel via fax from plaintiff's counsel).

5. **TCPA, 47 U.S.C. § 227(b)(1)(A)(iii)--using automatic phone system to call cell** (calls to debtor's cell phone after debtor told to stop calling, could not pay, and did not have permission to call debtor).

OPPORTUNITIES TO HEALTH CARE PROVIDERS FOR INCREASING COMPLIANCE AND REDUCING LIABILITY

To establish a strong compliance program and develop a reputation for having a strong compliance program, healthcare providers should--with the assistance of counsel--assess their policies, procedures, and practices and consider implementing various precautionary measures.

Revise and Enforce Contracts with Collection Companies

In an FCCPA case prosecuted by Lash & Wilcox, the plaintiff sued Florida Health Sciences Center ("FHSC") after being contacted by FHSC and two debt collection agencies working on its behalf: Merchants Association Collection Division ("MAF") and Preferred Collection and Management Services, Inc. ("Preferred").[42] MAF and Preferred contacted the plaintiff to collect for treatment that the plaintiff received at FHSC's Tampa General Hospital.[43] Plaintiff contended, however, that she and her insurance company had already covered the bills upon which FHSC, MAF, and Preferred attempted to collect and that FHSC and its agents therefore attempted to collect upon a debt that FHSC knew to be illegitimate.[44]

The Court rejected FHSC's argument that "because only *individuals* in the Defendant's organization and in the collection agencies acting on its behalf were told that Plaintiff's debt had been settled, the corporation ***115** itself did not have actual knowledge."[45] Instead, the Court explained that "[c]orporation and agency principles ... imput[e] the actions of a corporation's agents and employees to the corporation itself, which is the only entity that must have knowledge of the illegitimacy of the debt."[46] And, "if a corporation is aware that a debt is illegitimate, and its employees or agents attempt to collect that debt[,] ... the corporation has violated the FCCPA."[47] Thus, according to the Court, FHSC had "direct knowledge" that the debt had been settled because individuals "working directly for" FHSC were informed of the full payment when: (1) FHSC received full payment; (2) plaintiff informed a caller from FHSC's collection department of the payment; and, (3) plaintiff's insurer wrote a letter to FHSC explaining prior payment.[48] The Court therefore attributed actual knowledge of full payment to FHSC, and explained that it was responsible for the employees and agents (Preferred and MAF) who, acting on FHSC's behalf, attempted to collect the debt.

Several other federal decisions accept this agency theory of liability pursuant to which a corporation is responsible for the actions of collection agencies it employs.[49] Moreover, recent federal decisions interpreting and applying Florida law permit "'on behalf of' liability," finding that a corporation can be liable for "indirectly" communicating with a plaintiff by using a third party to send debt collection communications.[50] Accordingly, under the accepted theories of corporate knowledge and agency under the FCCPA, any knowledge of a healthcare provider employee will likely be imputed to the corporation itself, and if a ***116** collection agency contracting with the healthcare provider either attempts to collect upon a debt that the healthcare provider employee knows to be illegitimate, contacts a represented debtor, or abuses or harasses a debtor, the healthcare provider likely faces exposure to liability under the FCCPA. Therefore, providers should review contractual relationships with collection agencies for needed revisions or underutilized provisions that may help reduce litigation expenses.

Healthcare providers should be weary of terms with collection agencies that declare an agency relationship. This could unnecessarily expose a provider to consumer collection claim liability. Providers should consider including indemnity provisions in contracts with collection agencies, or if the contract contains an indemnity provision, health care providers should consider consistently enforcing it and requiring the collection agency to face the consequences of improper contact with a consumer. Before relying on an indemnity provision, however, healthcare providers should consider how enforcing

01/24/2017 3:39 PM Electronically Filed: Hillsborough County/13th Judicial Circuit Page 7

this provision could affect the ongoing business relationship.

Providers should also consider re-negotiating with collection agencies to revise existing contracts to clarify that collection agencies will comply with the FCCPA, FDCPA, and TCPA, and to ensure that the collection agency's practices and internal processes and procedures comply with these statutes. Providers should consider requesting an explanation of the collection agency's policies and procedures that it has in place. Requiring compliance as part of its agreement with a collection agency will help a provider present a *bona fide* error defense should the collection agency incur any liability on your behalf.[51]

Moreover, requiring a collection agency to provide a healthcare provider with the collection agency's books and records would demonstrate a commitment to compliance and encourage compliance through monitoring. Through these measures, healthcare providers can demonstrate to plaintiffs, their counsel, and potential fact-finders that they have ensured debt collection on their behalf and completed by their agents is subject to procedures designed to avoid violations. To the extent that the provider documents that it requires its agents to comply with the consumer collection laws, the provider increases its ability to respond to demand letters and litigate if necessary. The provider will also enhance its reputation for compliance through these measures.

Document Results and, if Applicable, Shift the Onus of Defense to Collection Agencies

In addition to requiring each collection agency to demonstrate the precautions and measures each takes to prevent violations of Florida's *117 consumer collection laws, providers should document its efforts to spur the collection agencies' compliance and the results obtained from these efforts. To the extent the provider creates a paper trail, the provider reduces its eventual liability under the Acts as it possesses a reservoir of evidence to draw upon to encourage repeat players to dismiss their claims or settle, and to present a *bona fide* error defense in any litigation.[52] Similarly, a track record of errors prevented--e.g., individuals not contacted because the provider or the collection agency investigated and found out about attorney representation, bankruptcy, or insurance coverage--will be helpful to demonstrate compliance before a court.[53]

When a provider possesses evidence that a collection agency made the contact allegedly giving rise to liability--despite the provider's procedures implemented to deter such conduct--the provider can request that plaintiff's counsel pursue the collection agency for its responsibility in initiating the communication at issue. Although the provider could be subject to liability under an agency or "on behalf of" theory of liability pursuant to the language in the contract, some plaintiff's counsel elect to pursue the collection agency and have the provider and collection agency determine indemnity claims separately. This can be an attractive option to providers as the onus would be on a collection company to seek indemnity from the provider should the collection company believe it is not liable for the contact. Rather than haggling with a collection agency to recover for damages that they caused, a provider is kept out of the fray. Again, this involves a business calculation regarding whether the provider is concerned about potentially damaging its relationship with the collection company.

Consider Selling Accounts Receivable to Collection Companies.

As explained above, a provider can be deemed ultimately liable for the actions of collection agencies under several theories of liability. Instead of revising the provider's contracts with collection agencies to improve their compliance efforts and/or revising and relying upon indemnity provisions to require that collection agencies absorb the liability for their actions, a provider could identify and negotiate with companies that will purchase accounts receivable. Once a separate entity owns the accounts and attempts to collect upon the outstanding balances for its own behalf, the provider should no longer be liable for any violations of the consumer collection laws incidental to the collection efforts.

Monitor and Immediately Disseminate Changes to a Patient's* *118 *Collection Information

Providers should consistently record and disseminate any of the following information regarding a patient any time such information is related to any of its employees from any source:

- revocation of consent to being contacted (*e.g.*, being told to stop calling);
- representation by an attorney;

01/24/2017 3:39 PM Electronically Filed: Hillsborough County/13th Judicial Circuit Page 8

- bankruptcy or refusal or inability to pay;
- insurance coverage;
- workers' compensation coverage;
- prior payment of an amount included in an account statement or otherwise listed as outstanding; and,
- changes to contact information (*e.g.*, phone number, address, email, or employer).

A change in any of these areas can expose the provider to liability if not accounted for, and when any employee learns of such information, it is imputed to the corporation as a whole. Thus, the provider should provide a mechanism through which an employee can immediately report any relevant information related by a patient or other source regarding these issues, and require each employee to utilize this system to report any such information learned and to check this system before communicating with a patient. Through this process, the provider can prevent further contact or other action that could support a claim under Florida's consumer collection laws.

Not only can effective monitoring and internal reporting of this information reduce instances in which a provider's employee violates the consumer collection laws, the provider may be required to provide such information to collection agencies pursuant to agreements with the collection agencies. To the extent the provider can establish and use such an internal control to promptly record and report this information, it can reduce its exposure to agency or "on behalf of" liability for the actions of collection agencies as well as avoid unintentionally breaching any agreements. Additionally, a provider's efforts to monitor these areas further demonstrates evidence of its commitment to compliance, which will discourage plaintiffs' counsel to incur costs litigating against it and enhance its ability to assert a *bona fide* error defense in the event of inadvertent contact.

Providers should monitor their fax machines and immediately note any attorney representation letters faxed to it or any other changes to a ***119** patient's collection information. If a fax number or email address is not monitored or otherwise utilized, providers should consider disconnecting or discontinuing it so that they can defend against claims that they acquired knowledge via fax or email of a patient's bankruptcy, that a patient retained counsel, or similar changes that prohibit communications to collect amounts owed by a patient.

Additionally, providers must ensure that patient information is immediately updated as soon as any payments are received to cover a patient's treatment or as soon as any information relating to insurance or other coverage is received. Concomitantly, enhancing a provider's ability to prevent account statements from going out once payments are made or coverage information is acquired will prevent claims under the consumer collection laws. Immediate dissemination and the ability to prevent bill generation and mailing can deter claims.

Review Patient Agreements for Consent and Arbitration Provisions

Providers should not only monitor the means by which a patient or his attorney may contact it, but they should attempt to contract with the patient to define these means. Additionally, providers should expressly obtain patient consent to communications via cell phone or any other method by which the provider might contact a patient.

Providers should clarify acceptable methods for a patient to withdraw his or her consent by requiring the patient to reach out to a regularly monitored email address and/or mailing address. Although such a defense might not ultimately prevail if asserted alone as any knowledge acquired by an employee is imputed to the entire company, such a contractual provision may reduce unintended improper contact by notifying a patient how he or she can put a stop to contact, which in turn may prevent some cases from ever arising.

Providers should also consider whether to include in their agreement a provision requiring patients to consent to arbitration, rather than litigation in state or federal court, for disputes arising out of treatment, billing, or otherwise as a result of the provider's relationship with the patient. Arbitration is designed to be an expedited process with less attendant costs should a matter not be promptly settled.

Require Employees to Note the Substance of Oral Communications with Patients.

01/24/2017 3:39 PM Electronically Filed: Hillsborough County/13th Judicial Circuit Page 9

Providers should consider incorporating into their policies and procedures a requirement that any employee who communicates via telephone or face-to-face with a patient records notes of the substance of their conversation. Such notes do not have to be overly detailed. Even brief notations can demonstrate that later contact with a patient was not prohibited under Florida's consumer collection laws if there is no *120 indication that the provider should refrain from further contact (*e.g.*, attorney representation, bankruptcy, "do not call again," etc.). To the extent the provider establishes a consistent practice of recording certain relevant details of patient contact, the provider ensures that it has evidence to rebut a plaintiff's allegations that he or she revoked consent to contact or otherwise triggered potential liability for further communication. Even when a communication is for a routine reason that is unrelated to consumer collection, recording that fact, and noting that none of these topics came up in the communications with a patient will ensure that further contact will not expose the provider to liability and it will help the provider to ward off unsupported claims. To ease the potential burden on employees, providers should consider developing a short checklist of areas that should be noted if discussed and requiring an employee to merely indicate whether they were mentioned or not, and if so, the substance of such communication. Providers can present these checklists--which would be completed by employees during and after communications with patients and maintained as business records--to a court or other fact-finder to demonstrate that a patient did not request that the provider cease further contacting the patient, but instead the patient and provider discussed some other aspect related to treatment or services rendered. A provider thus creates a "paper trail" that evidences that the provider did not have the requisite knowledge of a patient's desire not to be further contacted, which triggers liability under the collection laws. The provider should make sure that all employees involved in patient contact and all debt collectors employed are apprised of these notes once recorded so that the provider refrains from further communications that would expose the provider to liability.

Create Brief Informational Chart Regarding Prohibited Contact

In addition to enhancing one's policies and procedures and providing training on compliance, providers should consider displaying important requirements and prohibitions of these ever-more-frequent claims in visible areas where employees with frequent patient contact work. For instance, identifying the acceptable times to call, the acceptable way to leave a message, and reminding employees to consult the "do not contact" list before reaching out to a patient will reduce potential violations. It will also add to the evidence of compliance that one can present to opposing counsel or a judge.

Maintain Rapport with Plaintiffs' Counsel, Investigate Facts Promptly, and Resolve Claims Involving Close Legal Questions Expeditiously

Defense counsel and providers should be ready to present underlying facts in an upfront, non-confrontational manner. It is beneficial to promptly investigate the facts of each claim or demand, as such *121 information is often discoverable and will inevitably need to be produced. Armed with such corporate records, a provider can engage in settlement communications early on, reducing or eliminating liability when there is evidence that appropriate policies and procedures were employed and improper contact did not occur. If improper conduct did occur, providers effectively stem their losses by opening up lines of communication to resolve the claim before significant attorneys' fees are incurred.

By consistently demonstrating candor and professionalism to opposing counsel, as well as demonstrating a commitment to compliance, providers and their defense counsel can ensure that plaintiffs do not push forward in litigation and incur costs and fees that plaintiffs might not recover as a result of a *bona fide* error defense or a plaintiff's inaccurate recollection. Over time, repeat players that take Florida's consumer collection laws seriously should reap rewards as plaintiffs become aware of the risk in litigating against compliant providers.

Footnotes

[a1] Associate, Holland & Knight LLP; J.D., Harvard Law School; B.A., The University of North Carolina at Chapel Hill.

[1] *See* Henry N. Butler & Joshua D. Wright, *Are State Consumer Protection Acts Really Little-FTC Acts?*, 63 FLA. L. REV. 163, 164-65 (2011) (citations omitted).

01/24/2017 3:39 PM Electronically Filed: Hillsborough County/13th Judicial Circuit Page 10

[2] Kaplan v. Assetcare, Inc., 88 F. Supp. 2d 1355, 1358 (S.D. Fla. 2000).

[3] FLA. STAT. § 559.77(5) (2010); *see also* Gann v. BAC Home Loans Servicing LP, 145 So. 3d 906, 908 (Fla. Dist. Ct. App. 2014).

[4] Trent v. Mortg. Elec. Registration Sys., Inc., 618 F. Supp. 2d 1356, 1361 (M.D. Fla. 2007), *aff'd*, 288 Fed. Appx. 571 (11th Cir. 2008); *Gann*, 145 So. 3d at 908-09; *see also* 15 U.S.C. § 1692 (2012).

[5] The FCCPA applies to any person, while the FDCPA is limited to debt collectors. *Compare* FLA. STAT. § 559.72 (2010), *with* 15 U.S.C. § 1692c (2012). Although the FDCPA does not apply to original creditors by its own terms, one federal judge has still discussed its potential applicability to a health care facility. Bacelli v. MFP, Inc., 729 F. Supp. 2d 1328, 1344-45 (M.D. Fla. 2010).

[6] FLA. STAT. § 559.72(9) (2010); *see also* 15 U.S.C. § 1692e(5), (7) (2012).

[7] 15 U.S.C. § 1692d(5), 1692e(8) (2012); FLA. STAT. § 559.72(7) (2010).

[8] 15 U.S.C. § 1692c(a)(2) (2012); FLA. STAT. § 559.72(18) (2010).

[9] 15 U.S.C. § 1692c(c) (2012). The FDCPA exempts further communications if done to notify the debtor that the person will be terminating further communications or that the person may or will invoke specified remedies. *Id.* at § 1692c(c)(1)-(3).

[10] *Id.* at § 1692d(1)-(2); FLA. STAT. § 559.72(2) (2010).

[11] FLA. STAT. § 559.72(1) (2010). This includes using communications that appear authorized, issued, or approved by a government agency or an attorney when they are not; using stationary, instruments, or forms that only attorneys are authorized to prepare to communicate with a debtor as a guise; and orally communicating so as to give the false impression that the person is an attorney or associated with one. *Id.* at § 559.72(10-12); 15 U.S.C. § 1692e(1), (3-4), (9), (13) (2012). Also, misrepresenting that a document is not legal process or does not require action is prohibited. *Id.* at § 1692e(15) (2012).

[12] FLA. STAT. § 559.72(3), (6) (2010).

[13] 15 U.S.C. § 1692c(a)(3) (2012). Communicating with an employer is not prohibited, however, with a debtor's written permission or acknowledgment of the existence of the debt after it has been placed for collection. FLA. STAT. § 559.72(4) (2010).

[14] 15 U.S.C. § 1692c(b) (2012).

[15] FLA. STAT. § 559.72(5) (2010); *see also* 15 U.S.C. § 1692e(8) (2012).

[16] *Id.* § 1692e(2)(A, B), (10). Similarly, the FDCPA requires a debt collector to disclose in its initial communication to a debtor that it is attempting to collect a debt and in its subsequent communications that they are being sent from a debt collector. *Id.* at § 1692e(11). The FDCPA also prohibits a debt collector from using a name other than the actual debt collector's business' name. *Id.* at § 1692e(14).

[17] The debtor's last known time zone applies for this determination. 15 U.S.C. § 1692c(a)(1) (2012); FLA. STAT. § 559.72(17) (2010).

01/24/2017 3:39 PM Electronically Filed: Hillsborough County/13th Judicial Circuit Page 11

[18] *Id.* at § 559.72(19) (2010) (including "collect telephone calls and telegram fees").

[19] The FCCPA provides an exception when acting pursuant to a court order or as an assignee for the benefit of a creditor. FLA. STAT. § 559.72(13) (2010); 15 U.S.C. § 1692d(4) (2012). Falsely representing that a sale, referral, or transfer of the debt would cause a debtor to lose a claim or defense is also prohibited. *Id.* at § 1692e(6)(A).

[20] *Id.* at § 1692d(3). This is "commonly known as a deadbeat list." FLA. STAT. § 559.72(14) (2010).

[21] *Id.* at § 559.72(16) (2010).

[22] *Id.* at § 559.72(15) (2010); 15 U.S.C. § 1692d(6) (2012).

[23] Cliff v. Payco Gen. Am. Credits, Inc., 363 F.3d 1113, 1126 (11th Cir. 2004) ("To determine whether a debt is legitimate or whether a legal right exists, courts must refer to other statutes that establish the legitimacy of a debt and define legal rights.").

[24] Kaplan v. Assetcare, Inc., 88 F. Supp. 2d 1355, 1362 (S.D. Fla. 2000) (finding that the plaintiff stated a cause of action under section 559.72(9) of the FCCPA based on allegations that defendant sent a bill for services covered by patient's HMO and thus violated section 641.315(3) of the Florida Insurance Code). The Eleventh Circuit has cited the Southern District's decision in *Kaplan* approving gly. *See Cliff*, 363 F.3d at 1126.

[25] Florida's workers' compensation statute and the rules promulgated thereunder prohibit health care providers from "collect[ing] or receiv[ing] a fee from an injured employee within this state." FLA. STAT. § 440.13(13)(a) (2015); *see also* FLA. STAT. § 440.13(3)(g) (2015) ("The employee is not liable for payment for medical treatment or services provided pursuant to this section ...."); Fla. Admin. Code R. 69L-7.710(4)(a), (5)(j); *OMS Frequently Asked Questions*, My Florida CFO, http://www.myfloridacfo.com/Division/wc/provider/oms-faqs.pdf.

[26] *Cliff*, 363 F.3d at 1126-31.

[27] Read v. MFP, Inc., 85 So. 3d 1151, 1155 (Fla. Dist. Ct. App. 2012) (citing Bacelli v. MFP, Inc., 729 F. Supp. 2d 1328, 1337 (M.D. Fla. 2010)).

[28] *Read*, 85 So. 3d at 1155 (citing N. Star Capital Acquisitions, LLC v. Krig, 611 F. Supp. 2d 1324, 1336-37 (M.D. Fla. 2009)).

[29] *Read*, 85 So. 3d at 1155 (citing Williams v. Streeps Music Co., 333 So. 2d 65, 67 (Fla. Dist. Ct. App. 1976)); Scott v. Fla. Health Scis. Ctr., Inc., No. 8:08-CV-1270-T-24EAJ, 2008 WL 4613083, at *2 (M.D. Fla. Oct. 16, 2008).

[30] *Id.* at *2 (citing Story v. J.M. Fields, Inc., 343 So. 2d 675, 677 (Fla. Dist. Ct. App. 1977)). Thus, whether one's actions constitute harassment or abuse is usually a jury question. *Bacelli*, 729 F. Supp. 2d at 1343.

[31] 47 U.S.C. § 227(b)(1)(A)(i)-(iii) (2012). The TCPA also prohibits using an auto-dialer to engage two or more phone lines at a business at the same time. *Id.* at § 227(b)(1)(D).

[32] *Id.* at § 227(b)(1)(B).

[33] *Id.* at § 227(b)(1)(C)(i)-(ii).

01/24/2017 3:39 PM Electronically Filed: Hillsborough County/13th Judicial Circuit Page 12

[34] FLA. STAT. § 559.77(2) (2010); 15 U.S.C. § 1692k(a)(1)-(3) (2012).

[35] FLA. STAT. § 559.77(2) (2010) (emphasis added).

[36] 47 U.S.C. § 227(b)(3)(B) (2012).

[37] *Id.* at § 227(b)(3). Violators of the TCPA can also be liable for civil forfeiture penalties and criminal penalties, including additional fines. *Id.* at § 227(e)(5)(A)-(B).

[38] FLA. STAT. § 559.77(3) (2010); 15 U.S.C. § 1692k(c) (2012).

[39] 47 U.S.C. § 227(c)(5) (2012).

[40] *See* In re Burdett, No. 8:09-bk-00816-KRM, 2015 WL 150848, at *4, *6 (Bankr. M.D. Fla. 2015) (requiring defendant to pay plaintiff's counsel $57,371.00 in fees despite only recovering $1,000 in statutory damages for the plaintiff at trial); R. Martin Salzgeber, D.D.S., v. Kelly, 826 So. 2d 366, 367 (Fla. Dist. Ct. App. 2002) (awarding plaintiff's attorney an amount of fees that exceeded the contingency fee contained in the contract with plaintiff because an FCCPA suit is a "public policy enforcement case" and "the primary purpose of [such] fee authorizing statutes is to encourage individual citizens to bring civil actions that enforce statutory policy.") (citations and quotations omitted).

[41] Bacelli v. MFP, Inc., 729 F. Supp. 2d 1328, 1338-39 (M.D. Fla. 2010) (rejecting *bona fide* error defense at summary judgment stage); *see also* N. Star Capital Acquisitions, LLC v. Krig, 611 F. Supp. 2d 1324, 1337 (M.D. Fla. 2009) (quoting Niven v. Nat'l Action Fin. Servs., No. 8:07-cv-1326-T-27TBM 2008 WL 4190961, *3 (M.D. Fla. 2008)); Kelemen v. Prof'l Collection Sys., 2011 WL 31396, *6 (M.D. Fla. 2011) (rejecting summary judgment on bona fide error defense regarding debts incurred for care received at Florida Hospital).

[42] Scott v. Fla. Health Sciences Ctr., Inc., No. 8:08-CV-1270-T-24EAJ, 2008 WL 4613083, at *1 (M.D. Fla. Oct. 16, 2008).

[43] *Id.* at *2.

[44] *Id.* at *2, *4.

[45] *Id.* at *3 (FHSC argued that "to be guilty under the FCCPA, the specific person calling or sending a collection letter to Plaintiff on behalf of Defendant would have to be aware that the debt was illegitimate").

[46] *Id.* at *3.

[47] *Id.*

[48] *Id.*

[49] Kaplan v. Assetcare, Inc., 88 F. Supp. 2d 1355, 1363 (S.D. Fla. 2000) (accepting plaintiff's argument that knowledge or intent

01/24/2017 3:39 PM Electronically Filed: Hillsborough County/13th Judicial Circuit Page 13

under the FCCPA could be imputed to debt collectors engaged by hospital on agency theory); Bacelli v. MFP, Inc., 729 F. Supp. 2d 1328, 1338 (M.D. Fla. 2010) (denying St. Joseph's Hospital's motion for summary judgment where "[a]pparently relying on an agency theory, Plaintiff also alleges that St. Joseph's violated Sections 559.72(7), (9) & (18) by causing MFP to send its post-petition and post-discharge collection letters").

50 Mangiaracina v. Orange Lake Country Club, Inc., No. 8:14-CV-1166-T-36MAP, 2015 WL 685778 at *4 (M.D. Fla. Feb. 18, 2015) (holding that defendants' motion to dismiss, which argued that the entity sending the letter attempting to collect a debt was not an agent, was "undermined by the FCCPA's broad definition of 'communication,' [which includes] 'the conveying of information ... directly *or indirectly* to any person through any medium'" and that "in accordance with the FCCPA's broad definition of 'communication,' this Court has interpreted the FCCPA to *permit* 'on behalf of' liability.") (citing FLA. STAT. § 559.55(2) (2014) and Kelliher v. Target Nat'l Bank, 826 F. Supp. 2d 1324, 1329-30 (M.D. Fla. 2011) (denying defendant's motion to dismiss where plaintiff alleged that defendant used a third party to send debt collection communications to the plaintiff despite knowing that the plaintiff was represented by counsel, because such actions constituted indirect communications)).

51 *See, e.g., Bacelli*, 729 F. Supp. 2d at 1334-36.

52 *See, e.g., id.* at 1332-36.

53 *See id.*

End of Document

© 2016 Thomson Reuters. No claim to original U.S. Government Works.

01/24/2017 3:39 PM Electronically Filed: Hillsborough County/13th Judicial Circuit Page 14

IN THE CIRCUIT COURT OF THE THIRTEENTH JUDICIAL CIRCUIT
IN AND FOR HILLSBOROUGH COUNTY, FLORIDA
CIVIL DIVISION

PATTY DAVIS, on behalf of herself and others similarly situated, Plaintiff, v. LABORATORY CORPORATION OF AMERICA and LABORATORY CORPORATION OF AMERICA HOLDINGS, Defendants.	)	Case No. 15-CA-007914

REPLY IN SUPPORT OF MOTION FOR JUDGMENT ON THE PLEADINGS

Pursuant to Florida Rule of Civil Procedure 1.140(c), Defendants Laboratory Corporation of America and Laboratory Corporation of America Holdings (collectively, "LabCorp" or "Defendants"), reply in support of their Motion for Judgment on the Pleadings (the "Motion"). Most of Plaintiff's Response is devoted to knocking down straw-man arguments that do not address the threshold issue of whether this Court has subject-matter jurisdiction to adjudicate alleged violations of the Workers' Compensation Law. Critically, another trial court in this Circuit has already held that Circuit Courts have no subject-matter jurisdiction to adjudicate an identical class-action claim brought by this same Plaintiff. *See* Final Order Dismissing Amendment Complaint with Prejudice entered in *Patty Davis v. Sheridan Healthcare, Inc. and Sheridan Radiology Services of Pinellas, Inc.*, No. 2015-CA-009927 (Hillsborough Cir. Ct. Dec. 30, 2016) (Mark R. Wolfe, J.) (attached as Exhibit 1). "The Court finds that it does not have subject matter jurisdiction because the Workers' Compensation Law places exclusive jurisdiction

with the Florida Department of Financial Services when providers bill injured employees in violation of the Workers' Compensation Law." *Id*. (emphasis added).[1] Defendants respectfully request that this Court likewise dismiss Plaintiff's complaint for lack of subject-matter jurisdiction in comity with Judge Wolfe's decision.

I. Subject-Matter Jurisdiction is a Threshold Issue and it is Fundamental Error for this Court to Proceed Without It.

Subject matter jurisdiction is "the power of the trial court to deal with the class of cases to which the particular case belongs." *Cunningham v. Standard Guar. Ins. Co.,* 630 So. 2d 179, 181 (Fla. 1994); *Lovett v. Lovett,* 112 So. 768, 775 (Fla. 1927). "It does not depend upon the ultimate existence of a good cause of action in the plaintiff, in the particular case before the court[,]" but "[i]t is the power to adjudge concerning the general question involved, and is not dependent upon the state of facts which may appear in a particular case." *Cunningham*, 630 So. 2d at 181 (citation omitted). It is "fundamental error" for a Circuit Court to proceed without subject-matter jurisdiction. *Waggy v. State*, 935 So. 2d 571, 573 (Fla. 1st DCA 2006). "When a court lacks subject matter jurisdiction, it has no power to decide the case and any judgment entered is absolutely null and void, can be set aside and stricken from the record on motion at any time, and may be collaterally attacked." *Id.* Thus, "[c]ourts are bound to take notice of the limits of their authority and if want of jurisdiction appears at any stage of the proceedings, original or appellate, the court should notice the defect and enter an appropriate order." *Dep't of Revenue v. Daystar Farms, Inc.*, 803 So. 2d 892, 895–96 (Fla. 5th DCA 2002).

[1] In the decision, Judge Wolfe stated that the subject-matter jurisdiction issue was ripe for review by the Second District Court of Appeal, and Plaintiff duly filed a Notice of Appeal (hereinafter the "Sheridan Appeal"). If their Motion is granted, Defendants may seek consolidation of any appeal with the Sheridan Appeal, allowing the Second District Court of Appeal to hear from all parties when reviewing the novel subject-matter jurisdiction question presented by Plaintiff's claim.

03/22/2017 6:15 PM Electronically Filed: Hillsborough County/13th Judicial Circuit Page 2

II. Jurisdiction to Adjudicate Violations of the Workers' Compensation Statute is Vested in the Department of Financial Services.

The Workers' Compensation Law and appellate authority interpreting it could not be clearer that the Department of Financial Services ("Department"), not the judiciary, is vested with jurisdiction over disputes arising from alleged violations. The statute describes the legislature's intent to create a comprehensive, "efficient and self-executing" system administered by the Department. § 440.015, Fla. Stat. Consistent with that intent, "[a]ll Article V courts that have been presented with the issue of subject matter jurisdiction to adjudicate disputes involving workers' compensation matters"—in a "vast variety of disputed matters touching upon issues within the workers' compensation context"—"have uniformly held in very broad, general, and generic terms that Article V courts have no subject matter jurisdiction to adjudicate disputes involving workers' compensation issues." *Sanders v. City of Orlando*, 997 So. 2d 1089, 1093 (Fla. 2008) (emphasis added).

III. This Court Lacks Jurisdiction to Adjudicate Plaintiff's Claim Based on an Alleged Violation of the Workers' Compensation Law.

Plaintiff's Response concedes that "the Workers' Compensation Law provides the underlying basis" for her claim, which is contingent on the conclusion that "Defendants' conduct in this case was a violation of the Workers' Compensation Law and the rules implementing those statutes . . . ." Response at 17. Because her claim is wholly dependent on an alleged Workers' Compensation violation, jurisdiction for which is vested in the Department, this Court lacks subject-matter jurisdiction.

The Workers' Compensation statute is not a collection of independent, disconnected requirements and prohibitions, but rather a comprehensive scheme for the fair and efficient adjudication of Workers' Compensation claims and related disputes. To that end, the

03/22/2017 6:15 PM Electronically Filed: Hillsborough County/13th Judicial Circuit Page 3

Department is charged with administering a system "based on a mutual renunciation of common-law rights and defenses" by all participants, including health care providers, employers, carriers, and injured workers. § 440.015, Fla. Stat.; *see also* Motion at 2-6. As to providers like LabCorp, the Law mandates that "[b]y accepting payment under this chapter for treatment rendered to an injured employee, a health care provider consents to the jurisdiction of the department" and "agree[s] to comply with any decision of the department rendered under this section." § 440.13(3)(f), Fla. Stat. (emphasis added). Likewise, every employee, like Ms. Davis, is bound by the Workers' Compensation Law. § 440.03, Fla. Stat.

The statute states that "[t]he [D]epartment has exclusive jurisdiction to decide any matters concerning reimbursement, to resolve any overutilization dispute under subsection (7), and to decide any question concerning overutilization under subsection (8) . . . ." § 440.13(11)(c), Fla. Stat. Subsection 8 then sets out penalties that the Department may impose if it "determines that a health care provider has engaged in . . . a violation of this chapter or rules adopted by the department . . . ." § 440.13(8)(b), Fla. Stat. (emphasis added). Further, "[t]he department may investigate health care providers to determine whether providers are . . . engaging in improper billing practices, and whether providers are adhering to practice parameters and protocols established in accordance with this chapter." § 440.13(11)(a), Fla. Stat. (emphasis added).

As an example of improper billing practices, the Law prohibits health care providers from billing injured employees that are covered by the Act—the precise allegation that is at issue in this case. § 440.13(13)(a), Fla. Stat.; Compl. ¶¶ 19-21. Moreover, Rule 69L-34.001 specifically defines "collecting or receiving payment from an injured worker in violation of Section 440.13(13)(a) . . . or failing to properly bill medical services" as a "violation" of the Workers'

03/22/2017 6:15 PM Electronically Filed: Hillsborough County/13th Judicial Circuit Page 4

Compensation Law. Rule 69L-34.001, Fla. Admin. Code. Further evidencing the intention for the administrative process to handle claims like Plaintiff's, Rule 69L-34.003(4) provides for reporting to the Department of improper billing practices through submission of "[c]opies of collection letters sent to the injured worker from the Provider or a collection agent acting on behalf of the Provider seeking payment for covered medical services authorized by the Carrier." Rule 69L-34.003(4)(i) (emphasis added). Again, this is the exact allegation in this case, supported by precisely the same evidence that Plaintiff proposes to advance before this Court. Compl. ¶¶ 14, 18, Exs. A & D.

The plain language of these statutes make clear that (i) the Department of Financial Services has exclusive jurisdiction over this subject matter, (ii) the Department's jurisdiction includes claims against participating health care providers alleged to have violated Workers' Compensation statutes and rules, (iii) such violations include improper attempts by providers to collect reimbursement from injured workers, and (iv) to report such alleged violations, an aggrieved patient is to submit to the Department evidence of such violations including collection letters sent to injured workers. In short, the Department's exclusive jurisdiction applies to precisely the claims that Plaintiff advances in this case.

Plaintiff's Response argues that "Defendants have provided no case law supporting their statutory interpretation." Response at 7. But, the only Court to address Circuit Court subject matter jurisdiction over Plaintiff's novel claim agreed with the statutory interpretation advanced by Defendants. In fact it is Plaintiff who lacks any case law supporting her position, as she acknowledged at the hearing on Sheridan Radiology's Motion for Judgment on the Pleadings, conceding that there are no cases holding that there is Circuit Court jurisdiction over this dispute, or otherwise recognizing Plaintiff's cause of action.

03/22/2017 6:15 PM Electronically Filed: Hillsborough County/13th Judicial Circuit Page 5

> THE COURT: . . . What I'm saying is, you're telling me that as long as the [Workers'] comp statute's been in effect, there are no appellate decisions about what happens when an employee is improperly billed.
> Ms. Collins: I found none.
> THE COURT: None.
> Ms. Collins: I found none.

Dec. 7, 2016 Hrg. Tr. 33:14-21 (attached as Exhibit 2). Because Plaintiff's counsel concedes that this is a case of first impression, the Court should follow the plain reading of the Workers' Compensation statute and rules. The plain language shows that Department of Financial Services' jurisdiction is exclusive, and as Judge Wolfe has already ruled, Plaintiff's claim should be dismissed for lack of subject-matter jurisdiction.

Plaintiff's Response argues that the Department's exclusive jurisdiction does not apply because the statute separately defines the term "Reimbursement Dispute" to mean a disagreement between a health care provider or health care facility and carrier concerning payment for medical treatment. Response at 5 (citing § 440.13(1)(q), Fla. Stat.). This argument is unavailing for two reasons. First, the Legislature elected not to use the defined term "Reimbursement Dispute" in Section 440.11(c), and instead stated broadly that the Department has "exclusive jurisdiction to decide any matters concerning reimbursement." § 440.11(c), Fla. Stat. Second, contrary to Plaintiff's *expressio unius est exclusion alterius* argument, Response at 6, this Court cannot infer that the Legislature intended to preserve its jurisdiction for Plaintiff's claim in the context of a Workers' Compensation statutory scheme replete with expressions of the Legislature's intent to impose exclusive administrative jurisdiction broadly in furtherance of a self-contained system for the resolution of Workers' Compensation issues. Plaintiff also is mistaken as to the proper nature of the remedies offered by the Workers' Compensation Law. Plaintiff argues that the interpretation of the law urged by Defendants (and

03/22/2017 6:15 PM Electronically Filed: Hillsborough County/13th Judicial Circuit Page 6

adopted by Judge Wolfe) would provide Plaintiff with Departmental remedies that are "permissive" rather than mandatory. Response at 4 (citing to remedies codified at § 440.13(8)(b), Fla. Stat., which the Department "may impose" if it "determines that a health care provider has engaged in . . . a violation of this chapter or rules adopted by the department . . . ."). This is precisely the point of the Workers' Compensation Law: The Legislature vested enforcement of the Workers' Compensation billing rules exclusively within the discretion of the Department—which has the enforcement power to decide the proper remedy in a manner consistent with efficient administration of the Workers' Compensation Law—instead of creating a class-action bonanza for private plaintiffs and their attorneys. Plaintiff here has suffered no actual harm, and the wrongful conduct she alleges is expressly defined as a violation of the Workers' Compensation Law that the Legislature exclusively reserved to the Department to enforce.

Finally, Plaintiff misleads as to the effect of the exclusive jurisdiction. Plaintiff warns that "[a]t no point did the Florida Legislature enact a provision with in the Workers' Compensation law that wholly and completely regulates the relationship between an injured patient and a health care provider." Response at 7. As further stated below, Defendants have never argued this; Defendants argue only that Law wholly and completely regulates *whether health care providers may bill injured employees who are covered by the act*. The plain language of the statutes and rules leaves no doubt of this. *See* § 440.13(13)(a), Fla. Stat. ("A health care provider may not collect or receive a fee from an injured employee within this state, except as otherwise provided by this chapter."); Rule 69L-34.001 (defining Workers' Compensation Law "violation" as "collecting or receiving payment from an injured worker in violation of Section 440.13(13)(a) . . . or failing to properly bill medical services"); Rule 69L-

03/22/2017 6:15 PM Electronically Filed: Hillsborough County/13th Judicial Circuit Page 7

34.003(4)(i) (providing for reporting to the Department of improper billing practices through submission of "copies of collection letters sent to the injured worker from the Provider or a collection agent acting on behalf of the Provider seeking payment for covered medical services"). This is precisely the billing practice that Plaintiff has alleged in this case, Compl. ¶¶ 19-21, Exs. A & D, and this subject matter is specifically and exclusively regulated by the Workers' Compensation Law. This Court must therefore, as Judge Wolfe did, dismiss Plaintiff's Complaint.

IV. Plaintiff Should Have Brought Her Complaint Through the Employee Assistance and Ombudsman Office.

Plaintiff's Response cites Florida Statutes Section 440.191 selectively to argue that she was not required to attempt informal dispute resolution for this claim through the Employee Assistance and Ombudsman Office. Response at 8. On the contrary, section 440.191 applies to "health care providers" on its face. § 440.191(1)(a) ("It is the duty of all who participate in the workers' compensation system, including, but not limited to, . . . health care providers, . . . to attempt to resolve disagreements in good faith and to cooperate with the department's efforts to resolve disagreements between the parties."); § 440.191(1)(b) ("An Employee Assistance and Ombudsman Office is created within the department to inform and assist injured workers, employers, carriers, health care providers, and managed care arrangements in fulfilling their responsibilities under this chapter."). Plaintiff could and should have sought informal assistance to resolve her dispute before filing a class-action lawsuit.

V. A Violation of the Workers' Compensation Statute Cannot Serve as a Predicate for an FCCPA Claim.

In asserting that Plaintiff has stated a cause of action, her Response sets up a series of straw-men arguments that do not reflect the arguments actually made in Defendants' Motion.

03/22/2017 6:15 PM Electronically Filed: Hillsborough County/13th Judicial Circuit Page 8

First, the Response argues that Defendants are asking this Court to insert an exception into the FCCPA. Response at 13. This is not true. Defendants' Motion asserts that Circuit Courts are without jurisdiction to adjudicate alleged violations of the Workers' Compensation Law. Motion at 2-6.

Second, the Response further argues that the Workers' Compensation Law does not preempt the FCCPA. Response at 14. Defendants never claimed that it did. Again, Defendants' Motion contends that the Workers' Compensation Law vests exclusive jurisdiction in the Department of Financial Services to adjudicate and enforce alleged violations of the Workers' Compensation Law. Motion at 4-5.

Third, the Response argues that the FCCPA redresses a "separate harm occurring by improper collection practices" that somehow differs from the harm remedied by the Workers' Compensation Law. Response at 9. This argument is belied by Plaintiff's own complaint. *Compare* Compl. ¶¶ 19-21 (alleging that bills sent to Plaintiff were wrongful because the Workers' Compensation Law prohibits billing an injured worker) *with* § 440.13(13)(a), Fla. Stat. ("A health care provider may not collect or receive a fee from an injured employee within this state, except as otherwise provided by this chapter."); Rule 69L-34.001 (defining Workers' Compensation Law "violation" as "collecting or receiving payment from an injured worker in violation of Section 440.13(13)(a) . . . or failing to properly bill medical services").

Fourth, Plaintiff's Response claims that, if Defendants' arguments were correct, "an injured employee would not be permitted to bring any other claims touching on a compensable workplace injury," such as a claim for malpractice, or a claim against a third-party tortfeaser. Response at 15. Defendants have argued nothing of the sort. Defendants' Motion argues narrowly that the Workers' Compensation Law expressly creates exclusive administrative

03/22/2017 6:15 PM Electronically Filed: Hillsborough County/13th Judicial Circuit Page 9

jurisdiction for alleged violations of the Law. Motion at 9. Plaintiff concedes that "the Workers' Compensation Law provides the underlying basis" for her claim, which is contingent on the conclusion that "Defendants' conduct in this case was a violation of the Workers' Compensation Law and the rules implementing those statutes . . . ." Response at 17. Plaintiff's complaint alleges no other wrongful conduct: her claim is entirely predicated upon the Defendants' alleged violation of the Workers' Compensation Law. Compl. ¶¶ 19-21. In contrast, a medical malpractice or third-party negligence claim does not depend on the existence of a violation of the Workers' Compensation Law but involves separate wrongful conduct that is independently actionable.

Finally, Plaintiff attempts to defend her FCCPA claim by citing two cases, neither of which were predicated on alleged violations of the Workers' Compensation Law. Response at 12-13 (citing *Kaplan v. Assetcare, Inc.*, 88 F. Supp. 2d 1355, 1363 (S.D. Fla. 2000) and *Cliff v. Payco Gen. Am. Credits, Inc.*, 363 F.3d 1113, 1126 (11th Cir. 2004)). Both these cases are inapposite. *Kaplan* involved a claimant who argued that there was no private cause of action under the FCCPA because the alleged debt was uncollectable under the HMO statute, § 641.315, Fla. Stat. *Cliff* analyzed a defendant's claim that the federal Higher Education Act preempted the FCCPA. In neither case did these predicate statutes provide exclusive administrative remedies for improper collection attempts, as the Workers' Compensation Law does.

Consideration of the legal status of a debt obviously is central to the FCCPA, and it may be that certain sections of the Florida statutes are relevant to a debt's legal status. The issue here is that the only wrongful conduct Plaintiff has alleged against LabCorp is specifically defined as a violation of Workers' Compensation statutes and rules: Plaintiff is attempting to sue

03/22/2017 6:15 PM Electronically Filed: Hillsborough County/13th Judicial Circuit Page 10

Defendants for alleged violations of Section 440.13(13). Compl. ¶¶ 19-21. The Legislature created comprehensive and exclusive administrative remedies to enforce the Workers' Compensation Law for clearly stated policy reasons. *See* § 440.015, Fla. Stat. The Law reflects the Legislature's decision to remove such a dispute from the jurisdiction of Circuit Courts, and the Florida Supreme Court could not be clearer that "[a]ll Article V courts that have been presented with the issue of subject matter jurisdiction to adjudicate disputes involving workers' compensation matters have uniformly held in very broad, general, and generic terms that Article V courts have *no* subject matter jurisdiction to adjudicate disputes involving workers' compensation issues." *Sanders*, 997 So. 2d at 1093 (emphasis added). "These cases present a vast variety of disputed matters touching upon issues within the workers' compensation context and uniformly reject subject matter jurisdiction of worker compensation disputes." *Id*. (emphasis added). Critically, Plaintiff's Response cites no case holding that her creative invocation of the FCCPA permits an end-run around the plain language and intent of the Workers' Compensation scheme to foreclose civil claims for such alleged violations.

VI. Plaintiff's Declaratory Judgment Claim Should Be Dismissed.

Plaintiff argues that dismissal is improper under the Declaratory Judgment Act. Response at 16. Plaintiff is wrong because, for the reasons stated above, the Department of Financial Services has exclusive jurisdiction over the conduct she alleges to be wrongful. Where enforcement of certain claims or classes of alleged misconduct is reserved to an agency or a body having exclusive jurisdiction, the Declaratory Judgment Act does not create a cause of action in Circuit Court. *See, e.g., City of Gainesville v. Republic Inv. Corp.*, 480 So. 2d 1344, 1349 (Fla. 1st DCA 1985) (holding that Circuit Court lacked subject matter jurisdiction over declaratory judgment action brought by developer against city regarding development decision that was

03/22/2017 6:15 PM Electronically Filed: Hillsborough County/13th Judicial Circuit Page 11

exclusively reserved to the municipality); *Mountain v. Nat'l Airlines*, 75 So. 2d 574, 577 (Fla. 1954) (holding that court lacked jurisdiction to entertain action for declaratory judgment of wrongful discharge where such Railway Labor Act adjustment board had exclusive jurisdiction to adjust grievances and disputes of the type alleged in the plaintiff's complaint).

Here, because the Department has the exclusive jurisdiction to enforce the Workers' Compensation Law (and because Plaintiff has not even attempted to bring her claim to the Department or to its Employee Assistance and Ombudsman Office), Plaintiff's claim for declaratory judgment should be dismissed.

CONCLUSION

For these reasons along with those identified in the Motion, Defendants Laboratory Corporation of America and Laboratory Corporation of America Holdings respectfully request that this Court dismiss Plaintiff's complaint and grant such further relief as may be just and proper.

Dated: March 22, 2017

Respectfully submitted,

/s/ Carol A. Licko

Carol A. Licko
Florida Bar No. 435872
James L. VanLandingham
Florida Bar No. 106761
HOGAN LOVELLS US LLP
600 Brickell Avenue, Suite 2700
Miami, FL 33131
Tel: (305) 459-6500
Fax: (305) 459-6550
carol.licko@hoganlovells.com
james.vanlandingham@hoganlovells.com

Steven F. Barley (*pro hac vice*)
Elisabeth S. Walden (*pro hac vice*)
HOGAN LOVELLS US LLP
100 International Drive, Suite 2000
Baltimore, MD 21202
Tel: (410) 659-2700
Fax: (410) 659-2701
steve.barley@hoganlovells.com
elisabeth.walden@hoganlovells.com

Counsel for Defendants Laboratory Corporation of America and Laboratory Corporation of America Holdings

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on March 22, 2017, I filed the foregoing Reply in Support of Motion for Judgment on the Pleadings via the Florida E-Filing Portal, which will serve an electronic copy of same to counsel for plaintiff, Christa L. Collins, Esq., Harmon, Woods, Parker & Abrunzo, P.A., clc@harmonwoodslaw.com.

/s/ Carol A. Licko

EXHIBIT 1

IN THE CIRCUIT COURT OF THE THIRTEENTH JUDICIAL CIRCUIT
IN AND FOR HILLSBOROUGH COUNTY, FLORIDA
CIVIL DIVISION

PATTY DAVIS,
on behalf of herself and others
similarly situated,

Plaintiff,

v.

SHERIDAN HEALTHCARE, INC.,
and SHERIDAN RADIOLOGY
SERVICES OF PINELLAS, INC.,

Defendants,

_____/

CASE NO.: 2015-CA-009927

CLASS REPRESENTATION

FINAL ORDER DISMISSING AMENDED COMPLAINT WITH PREJUDICE

THIS MATTER came before the Court for hearing on December 7, 2016, on Defendants' Motion for Judgment on the Pleadings for Lack of Subject Matter Jurisdiction. The Court, having considered the Motion, Plaintiff's written response, argument of counsel and being otherwise fully advised in the premises, finds as follows:

1. Plaintiff's Amended Complaint is a two-count putative class action seeking declaratory and injunctive relief in Count I, and damages under the Florida Consumer Collection Practices Act (Fla. Stat. § 559.72 and 559.77) in Count II, based on Defendants' alleged violation of Florida Statute § 440.13(13)(a).

2. The Court finds that it does not have subject matter jurisdiction because the Worker's Compensation Law places exclusive jurisdiction with the Florida Department of Financial Services when providers bill injured employees in violation of the Worker's Compensation Law. In making this ruling, this Court recognizes that this ruling then provides no remedy for the employee regarding being billed inappropriately by the health care provider and

EXHIBIT
A

03/22/2017 6:15 PM Electronically Filed: Hillsborough County/13th Judicial Circuit Page 15

that is a matter the Court believes the appellate courts need to take up and rule on in this decision.

IT IS, therefore, **ORDERED AND ADJUDGED** as follows:

1. Defendants' Motion for Judgment on the Pleadings is **GRANTED**. Both counts of the Amended Complaint are hereby dismissed with prejudice.

2. The Court reserves jurisdiction to consider any timely filed motions for taxable costs and attorneys' fees.

DONE AND ORDERED in Chambers on this _____ day of December, 2016.

Electronically Conformed 12/30/2016

JUDGE MARK R. WOLFE
Circuit Court Judge

Copies furnished to:
All Counsel of Record

241258 v1

03/22/2017 6:15 PM Electronically Filed: Hillsborough County/13th Judicial Circuit Page 16

EXHIBIT 2

IN THE CIRCUIT OF THE THIRTEENTH JUDICIAL CIRCUIT IN AND FOR

HILLSBOROUGH COUNTY, FLORIDA

CASE NO.: 2015-CA-009927

PATTY DAVIS,
on behalf of herself and others
similarly situated,

Plaintiff,

vs.

SHERIDAN HEALTHCARE, INC.,
and
SHERIDAN RADIOLOGY SERVICES OF PINELLAS, INC.,

Defendants.

_____/

PROCEEDINGS: Defendants' Motion for Judgment on Pleadings for Lack of Subject Matter Jurisdiction.

BEFORE: The Honorable Mark R. Wolfe,
Circuit Court Judge.

DATE: Wens., December 7th, 2016, 11:06 a.m.

LOCATION: The George E. Edgecomb Courthouse
800 East Twiggs Street
5th Floor, Room 514
Tampa, FL 33602

STENOGRAPHICALLY
REPORTED BY: Lisa Selby-Brood, RMR,
Registered Merit Reporter
Notary Public,
State of Florida at large.

APPEARANCES:

CHRISTA L. COLLINS, ESQ.
Harmon Woods Parker & Abrunzo, P.A.
110 North 11th Street, 2nd Floor
Tampa, FL 33602

Counsel for the Plaintiff

SCOTT W. ANDERSON, ESQ.
Shook Hardy & Bacon, LLP
100 North Tampa Street
Suite 2900
Tampa, FL 33602

Counsel for the Defendants

SUSAN N. EISENBERG, ESQ. *
Cozen O'Connor
200 South Biscayne Blvd.,
Suite 4410
Miami, FL 33131

Counsel for Defendant Sheridan Healthcare, Inc.

* (Appeared telephonically)

THE COURT: Good morning, ladies and gentleman. Counsel on the phone, would you please state -- this is Judge Mark Wolfe -- please state your appearance on the phone first.

MS. EISENBERG: Yes, your Honor.

This is Susan Eisenberg, on behalf of Sheridan HealthCare.

THE COURT: Thank you.

And on behalf of the Plaintiff?

MS. COLLINS: Christa Collins with Harmon Woods on behalf of the Plaintiff in the punitive class.

THE COURT: Thank you.

MR. ANDERSON: Your Honor, Scott Anderson with Shook, Hardy and Bacon, here on behalf of Sheridan Radiology, and with me is Annie Glisten (phonetic spelling) who's a paralegal with our office.

THE COURT: Good morning all of you.

All right. This is the Defendant's motion for judgment on the pleadings regarding subject matter jurisdiction.

Obviously I'm familiar with the potential of a class action lawsuit involved here.

I know that I denied the original motion to

dismiss, and primarily -- and this is my overview, and then you're each going to get an opportunity to tell me where you are -- my ruling regarding the motion to dismiss was primarily based on the idea that I did not believe that the Workers' Compensation law under 440 specifically preempted an action under the Florida Consumer Collections Act.

After I denied that motion to dismiss it's my understanding that the defendant took appeal. That was denied, then there recently was an order about fees for the plaintiff. Is that where that is?

MS. COLLINS: On the discovery issue?

MR. ANDERSON: Yes, your Honor.

MS. COLLINS: It is.

THE COURT: Regarding the discovery issue about what you can discover and whatever.

MR. ANDERSON: Yes, your Honor.

MS. COLLINS: And we will revisit that issue in January at a hearing, and maybe at the end of this hearing we can just talk about that a little bit.

THE COURT: When is that set?

MS. COLLINS: January 24th.

THE COURT: So you'll be in front of a new judge, so there really isn't any reason for me to revisit.

I'm being moved to Criminal, and Judge Cook will be in here. That was the first thing I was going to ask you.

Given the nature of this class action, is this something that would be better for her -- based on what I have already done, okay, and that part being done, is this better for -- something better for her to hear, or you think it's okay -- are you all in the position for me to rule on this, and then move forward with whatever else there is.

MR. ANDERSON: From our perspective, your Honor, we're perfectly comfortable. You're familiar with the issues --

MS. COLLINS: We agree.

THE COURT: Okay. Thank you.

So the appeal was primarily about the discovery; is that right?

MR. ANDERSON: Yes, Your Honor.

MS. COLLINS: That's correct.

THE COURT: So after the motion to dismiss -- which I denied -- I think it's part of the plaintiff's position that this motion -- soon as you answered the complaint, you filed another motion; all right? I think that's kind of where it looks like at this point -- which you have every right to

do.

MR. ANDERSON: Sure.

THE COURT: But I guess since we don't have any -- anything filed, other than -- before we had the complaint and we had a motion to dismiss which I denied, you had an answer, now we have a judgment on the pleadings.

What in this motion of judgment and pleading makes it different than this motion to dismiss?

When I review it, I see a lot of the same issues regarding whether you can bring an action at all.

MR. ANDERSON: Right. And your Honor, it's our position that this motion is a completely different issue.

THE COURT: Okay. All right.

MR. ANDERSON: And I'm happy to explain that --

THE COURT: Then go ahead.

MR. ANDERSON: -- before we even get started --

THE COURT: I was looking at it -- some of this has come up, and where are we now.

MR. ANDERSON: So, let's start there.

So your Honor had previously ruled on a motion to dismiss about whether there was a private right of action under the Workers' Comp statute --

THE COURT: And there is no case law on that.

MR. ANDERSON: Right. And whether the fact that there was no private right of action under the Workers' Comp statute prohibited liability under the FCC --

THE COURT: Whether you can bring the action under --

MR. ANDERSON: Right. And you denied that motion, and we're not here to revisit that motion.

THE COURT: Okay.

MR. ANDERSON: I want to make very clear, this is not about a private right of action, this is not about preemption. This is about subject matter jurisdiction; this Court's subject matter jurisdiction to hear the issues before it.

THE COURT: This goes back to the Workers' Comp statute and where this is a Workers' Comp issue, not an issue for regular circuit court jurisdiction --

MR. ANDERSON: Exactly.

THE COURT: -- is that where you are?

MR. ANDERSON: Exactly right.

THE COURT: All right.

MR. ANDERSON: And in doing that, I'd like to just focus on the actual statute itself.

THE COURT: That's fine.

MR. ANDERSON: And what we've done, your Honor, is --

THE COURT: And when I reviewed your motion and the response, it appeared to me -- and obviously going to let you take this further -- it appeared to me, Mr. Anderson, that you were focusing on if there is a dispute as to payment of a bill, a medical bill, there is a procedure to do that.

MR. ANDERSON: Correct.

THE COURT: Because isn't the real crux of this case the fact that the medical provider was billing the patient when it should have been billing the comp carrier or the person that's getting -- that's supposed to be paying the bills, the bills should not be sent to the employee.

MR. ANDERSON: That is the allegation, your Honor. And that's something that's addressed directly in the statute. And I'll get through there.

THE COURT: Okay.

MR. ANDERSON: And I've brought, to make it easier and more organized -- and I've tabbed them; it's not as bad as it looks -- a tabbed Workers' Comp statute, and this is all stuff that's cited in the notice.

THE COURT: I was going to say, I reviewed your motion, and so if you want to proceed along through the motion, I understand what you're going to do. And as I was reading, I understood that you highlighted it, and the concept of it is there is a procedure by which if bills are not being paid or they're not being paid correctly, there's a procedure under 440 which do that, and there are penalties if they don't do it.

MR. ANDERSON: Correct.

THE COURT: And one of those penalties is they can lose their ability to actually provide these services, except -- am I somewhat in the ballpark --

MR. ANDERSON: You are in the ballpark. And the penalties available under the comp statute are vastly in excess to what's available under the FCCPA.

But where we start -- and I'll turn your Honor to what I've presented. We'll just start with the general premise under Section 4400.015, which is on Page 1056 -- and that'll be the first tab there, and it's highlighted for your Honor.

In this proposition --

THE COURT: Well, before you go through all this, is there anything the plaintiff wants to say

in short summary of your position before I go through all of this?

MS. COLLINS: Yes.

THE COURT: Okay. I'm going to give you two minutes to respond.

MS. COLLINS: Okay.

THE COURT: All right.

MS. COLLINS: I'll do my best to do that.

THE COURT: All right.

MS. COLLINS: So the Workers' Compensation statute is intended to represent a renunciation of rights between the employer and the employee.

THE COURT: And to take out the issue of negligence and etc.

MS. COLLINS: Right.

THE COURT: Okay.

MS. COLLINS: And to deal with reimbursement disputes as are defined in the statute, which the motion didn't really address that definition, and those reimbursement disputes do not include the claim that's here. What we have here --

THE COURT: And why does it not include this claim, Counsel.

MS. COLLINS: Because reimbursement disputes are defined in the statute --

03/22/2017 6:15 PM Electronically Filed: Hillsborough County/13th Judicial Circuit Page 27

THE COURT: I'm going to let counsel speak. I'm going to give him just a couple minutes to tell me --

MS. COLLINS: This agreement --

THE COURT: When I reviewed your -- when I reviewed your response, your response was that's not covered by this statute.

MS. COLLINS: Exactly. Because reimbursement disputes specifically mean a disagreements --

THE COURT: Where am I reading from?

MS. COLLINS: This is Section 440.13. I don't know where it is in the tabs that they gave, but we submitted it to the Court as well. I have another copy here --

THE COURT: Well, I will pull up your binder here.

MS. COLLINS: 44013 --

THE COURT: It's actually in your memo response; isn't it?

MS. COLLINS: It is.

THE COURT: And what page is that?

MS. COLLINS: It was attached, so --

THE COURT: What page are you on?

MS. COLLINS: Where I'm addressing that question is Page 11 --

THE COURT: Okay.

MS. COLLINS: -- quotes the definition of reimbursement dispute at the bottom.

It means a disagreement between a health care provider or facility and the carrier concerning payment for medical treatment.

THE COURT: Not between the carrier or provider and the patient.

MS. COLLINS: There is no remedy provided for improper billing to a patient. It's prohibited, it creates the illegality, but that is the foundation for the FCCPA claim that it provides no remedy for a subsequent wrong to the injured worker, which is what the FCC is intended to do.

And there are many cases -- I'll highlight the ones that I think are the most compelling -- where it specifically acknowledges that you can look to other statutes to establish illegality. The FCCPA is intended to address that specific wrong.

The Workers' Compensation statute doesn't cover it, it doesn't govern the rights between an injured worker and a provider for a host of things that can happen subsequent to the on-the-job injury. Medical malpractice, bankruptcy disputes, FCCPA claims, they're not excluded.

The FCC doesn't -- the FCCPA gives a claim to any person, and doesn't limit the rights of injured workers in any kind of a way. So --

THE COURT: Well, it does limit the injured worker on matters like negligence.

MS. COLLINS: I'm saying the FCCPA doesn't exclude injured workers from --

THE COURT: Bringing an action under that --

MS. COLLINS: For that separate wrong that happened after the on-the-job injury.

THE COURT: All right. I understand.

Counsel, you can proceed.

MR. ANDERSON: I think the easiest way to dig through all these issues -- and I don't think you ever have to get to the FCCPA -- is just look in the Workers' Compensation statute, and look over what it has exclu -- what the department has exclusive jurisdiction.

So we were at 440.015, which is there on Page 1056, your Honor, and it's highlighted. And what that section said is the department agency, the office of insurance regulation and division of administrative hearings shall administer the Workers' Compensation law in a manner which facilitates the self execution of the system.

It's meant to be an all-exclusive system, and the department is meant to administer it.

THE COURT: Well, let me ask you this, since she brought it up: Since this is -- do you agree this is a reimbursement dispute?

MR. ANDERSON: No. I don't think it matters how you define it, whether it's a realization, reimbursement, you don't have to get there. It's addressed directly in the statute.

THE COURT: All right.

MR. ANDERSON: And why don't we start moving towards that way.

And so the next provision I think that is relevant, your Honor, is 440.13 3 F. And that's on Page 1083 of the handout I gave you.

THE COURT: Well, I read your memo.

Wouldn't it be easier if you just direct me into the memo?

MR. ANDERSON: Sure, if that's easier for you.

THE COURT: Sure. You made the argument, and I reviewed the argument. I would just as soon you direct me in the memo, rather than me just flip pages in the statute --

MR. ANDERSON: Sure. Page 4.

THE COURT: Okay. All right. Go ahead.

MR. ANDERSON: And what Section 440.13 3 F provides is that the department -- we've already established that the department has jurisdiction, it's supposed to be a self-executing system, and now 440.13 3 F applies to health care providers. Health care providers consent to the jurisdiction of the department --

THE COURT: Where's it say 3 F?

MR. ANDERSON: It's on the following page, your Honor. So it's at the top of -- it's the block quote on Page 4, but the cite runs over to page -- top of Page 5.

THE COURT: Oh, okay. Got you. Go ahead.

MR. ANDERSON: The other one -- that long one's a footnote, so it's the shorter one.

THE COURT: Okay.

MR. ANDERSON: The health care provider consents to the jurisdiction of the department as set forth in Subsection 11 -- and we'll talk about Subsection 11 -- and then it goes on -- and I'll just show you the boldest stuff -- the health care provider must further agree to comply with any decision of the department rendered under this section.

And we're under 14440.13. That's the section;

right?

MS. COLLINS: I'm sorry. I'm having trouble because I'm going between the statutes and motions and -- can you just give me that cite you were -- I just want to make sure I'm following the statute --

MR. ANDERSON: 440.13 --

MS. COLLINS: 13.

MR. ANDERSON: -- 3 F. It's actually tabbed and highlighted in the materials I gave you, too.

MS. COLLINS: All right. Thank you.

THE COURT: You can proceed, Counsel.

MR. ANDERSON: All right. And so Section 13 3F describes the department powers over the health care providers. Okay?

THE COURT: All right.

MR. ANDERSON: So now let's move to 440.13 11 C; okay? And that's on Page 5, your Honor.

THE COURT: I'm reading it right now.

MR. ANDERSON: And what 11 C says is the department has exclusive jurisdiction to decide any matters concerning reimbursement to resolve any overutilization dispute under Subsection 7, and to decide any questions concerning overutilization under Subsection 8.

And this is why the definition of reimbursement

or overutilization doesn't matter. Because now let's look at Subsection 8, so the very next line there in the motion, your Honor.

Subsection 8 says, "If the Department determines that a health care provider has engaged in a pattern or practice of overutilization or a violation of the -- this chapter or rules adopted by the Department, including a pattern or practice of providing treatment in excess of the practice protocols of treatment, it may impose one of the following penalties --" and your Honor sees there's an identified --

THE COURT: Right.

MR. ANDERSON: So now we have -- department has jurisdiction, it's supposed to be self executing, we know that it applies to health care providers, we know the jurisdiction's exclusive, and we know it applies to a violation of a chapter of rules.

So now let's look to the specific allegation in this case. And for that we go to 440.13 13 A. And it's on the prior --

THE COURT: It's down in the footnote.

MR. ANDERSON: Okay.

THE COURT: Yeah.

MR. ANDERSON: And that essentially is a

provision that prohibits health care providers from billing injured employees that are covered by the act.

So now we have the department has the jurisdiction, it applies to health care providers, it's exclusive, and it applies to the very wrongs that we're alleged in this case.

So now let's keep on moving on, and let's move to Section 440.13 11 A. And that's at the next page, your Honor.

THE COURT: All right.

MR. ANDERSON: And what 11 A says -- and it's titled Investigating Monitoring and Jurisdiction.

It says, "The Department may investigate health care providers to determine whether providers are complying with this chapter, and with the rules adopted by the Department. Whether the providers are engaging in overutilization, whether providers are engaging in improper billing practices, specifically --" that's exactly what we have in this case -- "and whether providers are adhering to practice parameters and protocols.

"If the Department finds that a health care provider has improperly billed -- which is the allegation in this case -- overutilized or failed to

comply with the Department rules or requirements of this chapter --"

THE COURT: Slow down a little bit.

The court reporter's trying to type all this --

MR. ANDERSON: I'm sorry --

THE COURT: -- and when people read --

MR. ANDERSON: That is funny, because I'm usually a very slow reader.

"It must notify the provider of its findings, and may determine that the health care provider may not receive payment from the carrier, or may impose penalties as set forth in Section 8 or other sections of this chapter."

So now we have the Department has exclusive jurisdiction over health care providers, in relation to this specific act identified in the complaint, the specific wrong -- and there's no other allegation of wrongdoing in the complaint --

THE COURT: What is the remedy for the person that's been billed?

MR. ANDERSON: They get reimbursed if they paid the bill.

THE COURT: And that's their only remedy.

MR. ANDERSON: That's their only remedy that's appearing here under this statute. And as we --

THE COURT: That's what they're saying, is outside of this statute.

Because they're saying that there is no -- there is no remedy for the person that's been injured. They can get all these bills coming in, and they don't have any remedy at all unless something happens between the Department and the provider.

MR. ANDERSON: Well, that's part --

THE COURT: Isn't that kind of what you're saying --

MS. COLLINS: And even then there's no remedy to the individual.

MR. ANDERSON: We know that that's the allegation --

THE COURT: That's right. Well, that's all we're dealing with right now, because this is the matter on the pleadings.

MR. ANDERSON: You're exactly right.

THE COURT: So --

MR. ANDERSON: But the --

THE COURT: -- are you saying -- you're simply saying it doesn't matter; they don't have any remedy.

MR. ANDERSON: I think they do have a remedy,

and the remedy is being reimbursed for any bills that they should --

THE COURT: But that isn't much of a remedy; is it.

MR. ANDERSON: That's in the eye of the beholder.

THE COURT: I mean, what I'm saying is if you got billed $10,000, the best that you can possibly do is you have to have a -- hire a lawyer or do anything else -- is to get reimbursed for the $10,000 they've overcharged you, based on the statute. Is that right?

MR. ANDERSON: Yes.

You're already in the Workers' Comp world, though.

THE COURT: I understand that; that's why I'm asking. Because the bottom line is -- as I was reading this I was saying, okay, your point being is if I read the statute and what it says, the only remedy to the person who has been overbilled is to be reimbursed for their overbilling.

MR. ANDERSON: That's right.

THE COURT: Overpayment; excuse me.

MR. ANDERSON: I think that's fine.

THE COURT: Okay.

MR. ANDERSON: And as we know, the Workers' Comp situation is a give and take.

THE COURT: Oh, no. I'm not saying -- I'm not saying that that doesn't make it not permissible under the statute, I'm simply just asking you is there any other remedy, and there isn't any.

MR. ANDERSON: No.

THE COURT: Okay.

MR. ANDERSON: And so now --

THE COURT: Because obviously they want to make a different remedy, and that is they want to be able to bring an action -- if somebody's overbilled or a group of people's overbilled -- for their clients' benefit or whatever.

MR. ANDERSON: Absolutely.

THE COURT: Okay.

MR. ANDERSON: Want lots of money for -- yeah. Opening a letter.

And what we have --

MS. COLLINS: Wow.

MR. ANDERSON: -- is Section 1311 A --

THE COURT: I will give you a chance to respond.

MS. COLLINS: All right.

MR. ANDERSON: -- is the Department may

investigate health care providers -- and we've talked about that. And if the Department finds that a health care provider has improperly billed, it's subject to these remedies.

Now let's talk about the practicalities. How does this happen.

If we turn the page, we get to Section 440.1911 A. And I'm going to focus on the highlighting. And you've read it, and I think Miss Collins has read it too.

"It is the duty of all who participate in this system, including but not limited to carriers, service providers, health care providers, attorneys, employers, managed care arrangements and employees --" it applies to all those people -- "to attempt to resolve disagreements between the parties.

"And the Department may, by rule, prescribe definitions that are necessary for the effective administration of this section."

And now let's move --

THE COURT: I remember -- I'm highlighting now --

MR. ANDERSON: Sure.

THE COURT: In this case there was never any

attempt by anyone on behalf of this injured party to resolve this matter through the Workers' Comp statute.

MR. ANDERSON: Exactly right.

THE COURT: Okay.

MR. ANDERSON: And now moving to the rules that were implemented by the Department to effectively administrate the rules, let's turn to Section 69 L -- and it's in the motion it's boldened there, your Honor -- 69 L - 34.003; right? Or 001; I'm sorry.

THE COURT: 001's right here.

MR. ANDERSON: And it defines a violation of the act to include "Collecting or receiving payment from an injured worker in violation of Section 4401313 A --" which is the exact provision they allege that we have violated.

And what are people supposed to do in support of that violation? What's the evidence? And the rule specifically talks about that too.

And in 34.0034 I -- which is down there -- it specifically alleges -- or it specifically states -- that "Support of documentation of a specific violation may include copies of collection letters sent to the injured worker from the provider or a

collection agent --" which is the exact allegation in this case -- "on behalf of the providers seeking payment for covered medical services authorized by the carrier."

And so we have the Department has exclusive jurisdiction -- exclusive means exclusive -- over this subject matter. And the subject matter includes health care providers, it includes violations of the statute, it includes violations vis-a-vis -- we just looked at Section 191 1A, vis-a-vis health care providers and employees, and the injured workers. It's exclusive, and it applies to the exact situation here. And there's rules to implement.

And now let's talk about what the Florida Supreme Court has interpreted, as far as this goes. And we highlighted for you -- and I have --

Get the Harris case --

THE COURT: Because there clearly are things that they did they decided are not included in the statute.

MR. ANDERSON: You're exactly right. And those are things that are either specifically carved out of the statute, such as an intentional tort by the employer --

THE COURT: Gross negligence.

MR. ANDERSON: Gross negligence, third-party tortfeasors. There's nothing in the statue that addresses or purports to even take jurisdiction away from a court when you're dealing with third parties. There's nothing in the statute that purports to take jurisdiction over medical malpractice claims. The statute simply doesn't address it.

So of course the Department can't have exclusive jurisdiction over something the statute didn't give it exclusive jurisdiction over.

In this circumstance the Department -- the legislature and the department have decided that they have exclusive jurisdiction over this very dispute.

And the Florida Supreme Court has discussed these issues, and we -- the next page is the block quote, but here's a highlighted copy of the case if your Honor would like it.

Here's one for you, Miss Collins.

THE COURT: This is from Sanders?

MR. ANDERSON: Yes.

THE COURT: All right.

MR. ANDERSON: And there as you see -- and we've highlighted it and I'm sure your Honor has

read it -- that "All Article V courts --" which is us, right now -- "that have been presented with the issue of subject matter jurisdiction to adjudicate disputes involving Workers' Compensation matters, have uniformly held in very broad, general and generic terms that Article V courts have no subject matter jurisdiction to adjudicate disputes involving Workers' Compensation issues.

"All Article V courts have placed exclusive subject matter jurisdiction for such disputes within the Workers' Compensation proceedings."

It has taken these causes of action out of the Article V bucket, and put it in the bucket over which the Department has exclusive jurisdiction.

"These issues present a vast variety of disputed matters touching upon issues within the Workers' Compensation context, and uniformly reject subject matter jurisdiction of Workers' Compensation disputes."

So what we have here, your Honor, we have a statute that gives exclusive jurisdiction to a body other than Article V courts. It has jurisdiction over the health care providers, its whole purpose is to address wrongs under the statute. It applies to the very wrong that's alleged in the complaint.

There's a process in place for the injured worker to air their grievances, and there's a process for the Department to take that into consideration, investigate, punish and reward.

THE COURT: But there is no -- as we say, it's a give and take, because there is no remedy for the aggrieved employee to have his or -- if, for example, they receive a bill and they have an emotional breakdown over it, there is no remedy for which they can proceed, other than to try to get the money back that -- that they would have never had to pay in the first place.

That's -- that's the way it is. Right?

MR. ANDERSON: The remedy would be only as provided by the Workers' Compensation statute --

THE COURT: Okay.

MR. ANDERSON: -- and that's part of the give and take --

THE COURT: I understand, I understand.

That's why we have gross versus regular negligence, etc.

MR. ANDERSON: Exactly right. And that's a legislative decision. They gave exclusive jurisdiction to the Department, and it includes the violation purported here, and it is what it is in

the statute. That's the remedy.

THE COURT: Okay. I understand.

MR. ANDERSON: I'll rest there.

THE COURT: Thank you. Counsel?

MS. COLLINS: Thank you.

So that is a lovely clipping of excerpts from statutory sections to create a compelling -- at face value -- quilt that seems very cohesive, but underlying it are false assumptions.

THE COURT: Okay.

MS. COLLINS: To begin with --

THE COURT: I go to your binder --

MS. COLLINS: Yeah, if I can do that --

THE COURT: You may do that. You know, after I talked about what we were talking about with the motion to dismiss, the next thing I was wonder from the Plaintiff's side is what are the exceptions, okay, and why this falls into the exceptions.

Because clearly, a lot of the things -- most of the things that have to do with the employee and the employer are covered by Comp.

So where are the areas -- I mean, obviously we know about gross negligence. That's not this case.

So where does --

MS. COLLINS: Yeah. So --

THE COURT: It doesn't have to -- I guess in other words -- I mean, as you say, it's a quilt. But it does talk about billing. And -- you know, as I asked him, I said, what other remedies does a person have? They have nothing.

MS. COLLINS: There's a specific section dealing with the exclusivity of Workers' Compensation laws, and it wasn't cited.

We cite it in our brief, but let me begin with Page 8 --

THE COURT: Okay.

MS. COLLINS: -- which deals with Section 440.151. And this is where the --

MR. ANDERSON: Is this your brief or mine? I'm sorry; I didn't mean to interrupt.

MS. COLLINS: This is mine.

440.051, which is dealing with the legislative intention -- what's the route of the Workers' Compensation statute. And it says -- although I don't believe we quote it in the entirety. I can provide the Court with an extra copy here --

THE COURT: I'm looking at it. I understand.

MS. COLLINS: The intent is to assure a quick and efficient delivery of disability and medical benefits to the injured worker. And to that end,

this give and take happens between the employer and the employee.

And the statute governs their rights, they renounce their common law rights, and they agree they're going to be covered by this as it relates to the employer and employee, and the carrier and the employee, and the provider, vis-a-vis the employee. So then -- when it talks about the efficient and self --

THE COURT: So your point is this doesn't -- this doesn't cover health care provider.

MS. COLLINS: It doesn't contemplate health care provider misconduct to the injured employee.

THE COURT: To the injured employee.

MS. COLLINS: It covers -- and they submit -- to the decisions of the Department as it relates to what they're going to be reimbursed.

And if they have billing practices that are loosey goosey, if they're -- you know, miscoding, if they're engaging in conduct with the carrier that's improper in terms of how they're utilizing services or billing for services, that's what the department governs. It deals with those issues relating to compensation for the treatment. This is --

THE COURT: Well, legally --

MS. COLLINS: -- separate wrong --

THE COURT: This isn't the first time that someone has been billed in a Workers' Comp case incorrectly.

There's no case law out there about what -- how this is supposed to --

MS. COLLINS: There actually are a number of pending cases presently --

THE COURT: That's what I was wondering.

MS. COLLINS: -- and I think it is -- it's a matter of, I think, general insensitivity to the vulnerability of the injured worker. And as the --

THE COURT: So are you saying these cases are in the pipeline, but nothing's been -- there's been trial court rulings that are on appeal?

Where are we?

MS. COLLINS: They're in litigation.

THE COURT: As I was reading all this I'm like, as long as the Comp statute's been around, I can't imagine there isn't opinions about what happens when the employee is improperly billed -- which we know clearly does happen --

MS. COLLINS: I know there have been a number of small claims cases that have been litigated and resolved.

THE COURT: Okay.

MS. COLLINS: This is a Circuit Court action, trying to obtain practice changes by -- and to increase the sensitivity to stop the billing practice -- which is what the FCCPA is designed for -- to deter illegal billing conduct, and to provide a remedy where it's otherwise not provided.

So there are a host of small claims cases where they've been resolved on an individual basis --

THE COURT: Well --

MS. COLLINS: -- in the favor of the employ -- they've been resolved in the favor of the employ -- typically the provider --

THE COURT: There is not -- the provider will pay it. What I'm saying is, you're telling me that as long as the comp statute's been in effect, there are no appellate decisions about what happens when an employee is improperly billed.

MS. COLLINS: I found none.

THE COURT: None.

MS. COLLINS: I found none.

THE COURT: Okays. 'Cause that's all I was looking for.

MS. COLLINS: No. I --

THE COURT: Does either side have a case -- I

mean, it just seems to me that in all the Workers' Comp cases -- the hundreds of thousands of Workers' Comp cases -- I would assume the numbers are at least that high, all right, over the years, and the number of injuries that it implies to -- that nowhere out there has there ever been a situation where someone has been overbilled, and how they proceeded -- whether the courts have said you can do it, no you can't.

MS. COLLINS: I can't cite you to a case.

THE COURT: Okay.

MS. COLLINS: And I think many providers have systems where they capture information that the person is an injured worker, and then they responsibly deal with the carrier and don't bill the injured worker.

But in these instances and with providers that don't do that, you see these injured workers being billed, you see sometimes them paying -- you see them being sent to collections and their credit being damaged.

You see damage that's hard to fix a dollar amount to, which is precisely what the FCCPA is designed to deal with.

So I guess what I'm saying is when you look at

the Workers' Compensation statute, it's dealing with the employer, the employee and the carrier, and as it relates to payment for those services, how much they're going to be reimbursed for those services, and the self-executing system relates to that.

Let me direct you to the section that deals with exclusive liability. 440.11.

THE COURT: What page are you on.

MS. COLLINS: And I'm going to find where that is in my -- on Page 9.

THE COURT: That's where I was.

MS. COLLINS: 440. --

THE COURT: Is that where the bankruptcy case was there, but we recognize the bankruptcy's not going to be --

MS. COLLINS: So this is a statute that deals with exclusivity of liability; the exclusivity of the Workers' Compensation remedies.

I have another copy for you here, your Honor, in case --

THE COURT: Copy of what; the statute?

MS. COLLINS: The statute.

THE COURT: Oh. Okay.

MS. COLLINS: And there are two provisions dealing with exclusivity.

"The liability of an employer shall be exclusive in place of all other liability."

And then when you turn the page to the Subsection 24 says, "The liability of the carrier to the employee or anyone else to bring suit in the name of the employee shall be provided --"

THE COURT: All right --

MS. COLLINS: "-- in this chapter."

THE COURT: So then it says, "Claims involving liability to the employee -- claims between the employee and the insurance carrier --

MS. COLLINS: Yes.

THE COURT: And there's no exclusivity on the employee and the --

MS. COLLINS: Provider.

THE COURT: -- the health care provider.

MS. COLLINS: That's right.

THE COURT: That's what -- that's the crux of your argument; isn't it?

MS. COLLINS: That's -- I mean, that's a piece of it --

THE COURT: Really the most important part.

MS. COLLINS: It's huge.

THE COURT: Aren't you arguing basically that it doesn't -- that while the employer clearly cannot

sue the employer, the employee can surely not sue the insurance carrier, there's nothing there that says the employee cannot sue the health care provider.

MS. COLLINS: That's right.

THE COURT: Isn't that the point?

MS. COLLINS: That is the point.

THE COURT: Okay. Understand.

MS. COLLINS: And as it relates to the Department, the sections that deal with the Department's ability to investigate, that's not a mandatory investigation of violations that would include the basis for illegality for billing. That -- the Department may investigate those issues. Don't have to.

There's no -- there's no exclusive --

THE COURT: Where are you reading from?

MS. COLLINS: That is --

THE COURT: What's the "may"?

MS. COLLINS: We are in 440.13, and we're on Page 12 --

THE COURT: Okay.

MS. COLLINS: -- of my brief. Subsection 11. Investigation monitoring jurisdiction --

THE COURT: Page 12, Subsection 11 --

MS. COLLINS: Bottom of the page.

THE COURT: "Department may investigate health care providers to determine whether the provider complying with the statute and rules of adopting by the Department." So --

MS. COLLINS: It doesn't --

THE COURT: -- I guess it says they can do it if they want, but they don't have to.

MS. COLLINS: Right. And it doesn't -- they don't occupy the field. They haven't created exclusive jurisdiction to deal with those kinds of issues. They've said it's in the unlawful --

THE COURT: "If the Department finds that a health care provider has improperly billed or overutilized or failed --" this is what the defense was talking about in this statute -- "including but not limited to practice, protocol, etc., it must provide -- must notify the provider of its findings and determine that the health care provider may not receive payment from the carrier."

All right.

"And may impose penalties set forth in Subsection 8."

MS. COLLINS: "May" impose.

THE COURT: Yeah; I understand.

It's all discretionary.

MS. COLLINS: Exactly.

THE COURT: So your point is if it's discretionary, it's not exclusive.

MS. COLLINS: Exactly.

THE COURT: All right.

MS. COLLINS: And as a discretionary function provides no remedy to the injured.

THE COURT: But they acknowledge there's no remedy.

MS. COLLINS: Right.

THE COURT: I mean, that's -- and just like there is no remedy for employer's negligence. There's no remedy for it.

MS. COLLINS: Right.

THE COURT: And -- because the opposite is also true. There's no -- there's no comparative negligence if the employee is negligent.

MS. COLLINS: Yes.

THE COURT: So that's the purpose of that. I think we're all in agreement with that.

Okay. Let's see. So the incident in dispute is not a reimbursement dispute as defined by the Comp statute. Reimbursement dispute means any disagreement between the health care provider or

health care facility and carrier concerning payment of medical treatment.

MS. COLLINS: That's right.

And if -- that's a specific definition of what a reimbursement dispute is; a disagreement between a health care provider and a carrier. A payment. That's what a reimbursement dispute is about.

These issues relate to whether the carrier ought to have to pay the amount --

THE COURT: Oh, I know, it has to -- I understand that --

MS. COLLINS: Yeah. The consent to jurisdiction of the Department is -- hinges on accept -- again, it relates to this issue of payment by the carrier. Should they get more, should they get less from the carrier.

What triggers the consent of the provider to the jurisdiction of the Department is accepting payment for the amount.

So my point is, as I said, the statute does expressly say what it is exclusive to. And it doesn't include the rights between the provider and the employee.

It does establish that they shouldn't do it, as a matter of law --

THE COURT: They shouldn't do what.

MS. COLLINS: Bill injured workers. They shouldn't bill them. That part's a given.

THE COURT: And Defense said -- they're just saying that that's covered in there by the fact that they do --

MS. COLLINS: And all I'm saying is that's as far as the statute goes.

THE COURT: Far as the statute goes, it says you shouldn't do it, and we may investigate.

It doesn't say anything else.

MS. COLLINS: Exactly. And when you look at the cases dealing with the FCCPA and whether the FCCPA ought to be able to look at other statutes to determine if a collection activity is illegal, that's what you look to.

Statutes do that. If it's illegal, FCCPA --

THE COURT: Does not --

MS. COLLINS: -- provides a remedy -- applies. If the -- if -- the FCCPA can look to another statute to say that's an illegal debt, and so now you have this separate remedy for this separate wrong. Even if there's no private right of action, even if it's mentioned in another statute. It's the foundation for a remedy for the separate wrong.

The Florida Supreme Court specifically recognizes that's the purpose of the FCCPA, to provide a remedy where it otherwise doesn't exist, and to deter.

And specifically noted that the FCCPA -- in the Harris versus Beneficial case -- isn't overlapping with criminal or administrative penalties. There's no conflict. It doesn't provide that.

It provides a remedy to the injured worker.

So we're not crossing over jurisdictions or stepping on each other. They're read hand in glove.

THE COURT: Two minutes to respond.

MR. ANDERSON: Okay.

I think it's very important -- 440.11 says what it says about exclusiveness of liability.

Her claim is under 4401313 A.

And then if we look at 4401311, it specifically says that the Court has -- the Department has exclusive liability. It doesn't limit it -- exclusive jurisdiction to decide any matters.

The definition of reimbursement is setting up a strawman to knock down.

We've never in our papers said it needs to be a reimbursement dispute. What we say is -- and it's right here in the papers and it's right there in the

statute -- the Department has exclusive jurisdiction to decide any matters including under Subsection 8, of the very statute we're being sued under.

Subsection 8 says the Department can determine that a health care --

THE COURT: You're going way too fast, Counsel.

MR. ANDERSON: Sorry; I know.

I've got two minutes.

THE COURT: Where do you want me to look.

MR. ANDERSON: Page 5.

THE COURT: Of your memo?

MR. ANDERSON: Yes, sir.

MS. COLLINS: Citing what statute, so I can keep up.

THE COURT: We're going to do that.

We're not going a hundred miles an hour so we're all trying to find where the other one is.

MR. ANDERSON: 44013 --

THE COURT: Where it says "the only remedy."

MR. ANDERSON: 11 C.

THE COURT: "Under Rule 69 L 34.01, violation of the action shall include collecting or receiving payment from an injured worker in violation of 440.1313 A."

That's your point.

MR. ANDERSON: Correct. It's addressed by the statute, exclusive jurisdiction under Section 440.13 11 C is not restricted to matters only between the employer and the employee, or the employee and the carrier. It specifically involves health care providers, and then the Department made a rule implementing it, and that's what we're being sued under.

And then also, keep in mind a provider remedy where none other relied -- where none would other rely was an argument made, and that was an interpretation by the Florida Supreme Court.

Without the Workers' Comp statute there's absolutely nothing wrong with the health care provider sending somebody a bill for the services they performed. That's something that's only addressed by the statute, and that's something that only the Department has the authority to redress.

It's plain -- you don't have to read between the lines, you don't have to do statutory interpretation. It says it in black and white in the statute, and I think that's important.

It may -- people may not like that it doesn't provide certain remedies, but it is what it is and it's under the statue, and it's a matter for the

legislature to determine if it needs to be changed.

MS. COLLINS: May I just read that specific section, because it's been lifted out of context.

THE COURT: Okay. We're on Page 5?

MS. COLLINS: Yeah. And his Page 5 is looking at that Subsection C, about where the Department has exclusive jurisdiction.

It has exclusive jurisdiction to decide any matters concerning reimbursement. That's by definition, provider to carrier, to resolve over to utilization. That's provider to carrier. And decide questions concerning overutilization.

THE COURT: But what about the --

MR. ANDERSON: Under Subsection 8.

THE COURT: What about the rule that says violation of the act also includes collecting or receiving payment from an injured worker?

MS. COLLINS: That's a violation of the act, but it's not related -- that's not overutilization.

This relates to overutilization. That's a -- that's a separate billing function to the injured worker. That specific statement does not include billing an injured worker in violation of the statute. It's been all pieced together, but the reality is --

THE COURT: The way that reads, you can't -- part of the Workers' Comp statute includes billing and collecting payments from an injured worker. That's how -- this page -- this is how their argument on Page 5 reads.

MS. COLLINS: That is how -- that is --

THE COURT: I mean, so tell me what's wrong with that, because that --

MS. COLLINS: Because when you look -- because even Subsection 8 talks about overutilization.

And it's talking about --

THE COURT: Okay. It says -- but where it highlights, it says, "Or violation of this chapter or rules --" and then they address the rule. The administrative rule, which is 69 L 34.001, and say that it is a violation of the act -- which I presume they mean Workers' Comp Act -- "Shall include collecting and receiving payment from an injured worker in violation."

Your point is collection and receiving payment from an injured worker, it can only be billed from one person, and that would be the -- that would -- only billing could be was from the medical care provider.

MS. COLLINS: It's -- it's completely

distorting the purpose of the compensation statute to deal with the issues between the employer and employee. It's reading it beyond its intention, and it is forfeiting rights.

Why should an injured worker, who's been injured on the job and is trying to get back to work, have fewer rights to be protected from unlawful billing activities than anyone else?

And part of what we've done today is -- the claim is not under 440. We have no claim under the Workers' Compensation statute. We have --

THE COURT: Oh, I know that --

MS. COLLINS: -- FCCPA --

THE COURT: Yeah, you -- but I -- his argument is is that it's covered under 440, and therefore it's exclusive.

Isn't that your point?

MR. ANDERSON: Yes, your Honor.

THE COURT: Okay. So --

MS. COLLINS: And I -- and I --

THE COURT: Obviously you don't have a claim under 440. You have a claim under 440. You can file a claim -- I presume you can file a claim under 440. You're trying to file a claim under FCCP --

MS. COLLINS: I can't file a claim under 440.

THE COURT: Because there's no --

MS. COLLINS: Because there's no remedy.

THE COURT: And that's what we talked about --

MS. COLLINS: Yeah. There's no remedy, and --

THE COURT: But there is no remedy -- there is no remedy if -- there is no remedy other than what the statute provides if the employer is negligent.

I mean --

MS. COLLINS: This isn't dealing with the employer.

THE COURT: This isn't dealing --

MS. COLLINS: Dealing with the health care provider --

THE COURT: Health care provider --

MS. COLLINS: -- who just tangentally --

THE COURT: Okay --

MS. COLLINS: -- has engaged with --

THE COURT: Well, who does the rule apply to when it says collecting or receiving payment from injured worker, if it's not -- if it's not applying to the health care provider? Who else can bill them? The employer?

Is that -- what I'm asking you is when I read this, clearly this rule under the statute applies to injured parties and collecting billing.

But you're point is -- what I'm asking you is under that rule, and under 440.1311 C, it's if the Department determines health care provider has engaged in a pattern or practice of utili -- overutilization or in violation of this chapter or rules -- and then they cite the rule -- and it says, "Includes collecting or receiving payment from the injured worker, in violation of 4401313 A."

So it does seem that it addresses that to me, Counsel.

MS. COLLINS: But when you look at the exclusivity section -- which stands on its own -- to say what does the Workers' Compensation -- what field does it occupy, what rights does it exclusively administer, all of those -- all of those rights are limited by the section we looked at earlier; 440.11.

Reading the statute the way he wants you to read it makes 440.11 meaningless.

440.11 would not exist, has no meaning as it relates to exclusivity --

THE COURT: How do you explain --

MS. COLLINS: -- read it this way --

THE COURT: How do you explain what the rule says, then?

How do you explain that it says -- it includes collecting and receiving payment from an injured worker. Because that's what -- that's what this case is about. It's about collecting payment from injured worker. That was improper, and that's what he's saying 441311 C deals with.

What I'm asking you then is how do you explain what it says in the act about collecting and receiving payment from an injured worker?

I understand you want to say there is no other remedy. I know that; that's why I'm asking the question.

But what I'm asking you is if it says that, aren't they saying there is no other remedy?

MS. COLLINS: I don't think they're saying there is no other remedy.

THE COURT: You don't think they're saying that.

MS. COLLINS: I don't think they're saying that.

THE COURT: But that's what --

MS. COLLINS: I think they would have to -- I think what they're asking you to do is to read language to say this is the exclusive remedy --

THE COURT: Oh, no. That's absolutely --

MS. COLLINS: -- but it don't say that. The statute doesn't say that.

THE COURT: It doesn't say --

MS. COLLINS: It says they cannot -- it says -- when we deal with the exclusivity section, it deals only with employer to employee, and --

THE COURT: Let's go back --

MS. COLLINS: -- provider to carrier --

THE COURT: -- and look at it so there's no -- in your brief it talks about the exclusivity is between the employee and the employer, and the employee and employer and their insurance carrier.

MS. COLLINS: Yes. And everything is --

THE COURT: And nothing in there that ever says there is an exclusivity between the employee and the health care provider.

MS. COLLINS: That's correct.

THE COURT: That's your argument.

MS. COLLINS: That's correct.

Why would that section exist?

THE COURT: Well -- one minute; I'm going to give you a response.

I'm going to have to make a ruling, because I'm moving to a new division. So I got to make a ruling on this.

Where are you -- going back to exclusivity, what page are you on your memo? It's way near the back, but we talked about that. Let's see.

Page 9, Page 8 -- Page 9. Bottom of the page. "Rather than providing the exclusive remedy for anything tangentally related to compensatable or workplace injury as argued by the Plaintiffs, the Workers' Compensation law expressly and affirmatively reserves its exclusivity to two types of claims: Claims involving liability between the employee and employer, and claims involving the employee and the insurance carrier under 440.1111. So what does that say, exactly? Where is 44111? Does it specifically say that in 44111.

MS. COLLINS: 44111 is the one that I handed you; just give me a moment --

THE COURT: Okay. I got you. All right.

MS. COLLINS: Let me find it --

THE COURT: I'm looking at it right now. Okay.

"The liability of the employer described in 440.10 shall be exclusive and in place of all other liability including vicarious liability of such employer to any third-party tortfeasor and to the employee, the legal representative thereof, the husband and wife, the parents, the dependents, the

next of kin, and anyone otherwise entitled to recover damages from such employer, at law or admiralty on account of injury or death, except as provided."

All right, Counsel. Where does it say that it applies then -- her argument is that where does it say in exclusivity that it applies then to a health care provider?

MS. COLLINS: May I just also point out that the section --

THE COURT: Well, we got six minutes left, and I've got to make a ruling.

MS. COLLINS: The other things that we have talked about, which are covered or deal with as exclusivity that you mentioned, third-party tortfeasors, intentional torts. Those are mentioned here. We've talked about that.

When you look at that statute which deals specifically with exclusiveness of liability --

THE COURT: All right. And the point I'm --

MS. COLLINS: -- it's all covering there.

THE COURT: And the exclusivity of the liability, nowhere in this statute does it deal with health care providers. That's your point.

MS. COLLINS: To the employee; correct.

THE COURT: To the employee.

MS. COLLINS: Which is why you have medical malpractice claims, which is why you have this claim -- which is a separate wrong -- and you look to the FCCPA to see if the Defendant is a person --

THE COURT: All right. One minute.

Counsel, go ahead.

MR. ANDERSON: It's very easy. Look to 4401311 C Page 5 of the motion.

THE COURT: Right.

MR. ANDERSON: I'm not talking about exclusiveness of liability that 11 C is talking about. I'm talking about --

THE COURT: 11 C --

MR. ANDERSON: -- the section she just read to you.

THE COURT: Well, I mean, doesn't --

MR. ANDERSON: Exclusiveness of liability.

THE COURT: Okay.

MR. ANDERSON: I'm talking about jurisdiction to address the subject matter of the lawsuit. Section 1311 C specifically states, "The Department has exclusive jurisdiction."

Doesn't talk about liability.

"The Department has exclusive jurisdiction to

decide any matters --" and because I have a minute, I'm going to go right to -- including under matters concerning overutilization, under Section 8 --" and we've read Section 8 ad nauseam.

The Department determines that a health care provider -- what we have here -- has engaged in a violation of the chapter rules.

That's what the Department has jurisdiction over.

I understand that there may not be a remedy, and that may make people unhappy, but that's something for the legislature to decide and that they have decided, and they've implemented rules to address this exact situation.

THE COURT: What this comes down to is do you believe they're entitled to a remedy, or don't you? I mean, it really is what this is.

If you believe the Comp statute covers this, then obviously the worker has -- the injured worker has no remedy, other than -- as I asked you at the beginning -- they get a bill. Even if they receive a bill and that bill is hundreds of thousands of dollars, and it causes them to have a nervous breakdown -- just as an example -- they have no remedy.

But that's the purpose of the Workers' Compensation statute.

MR. ANDERSON: That's what the statute says.

THE COURT: Now Counsel, your point is that the exclusivity of liability, I understand, is the employer on this matter.

MS. COLLINS: I'm saying the exclusivity provision covers the field.

THE COURT: And he's saying it's not.

MS. COLLINS: And of those things that it's exclusive to, that the Workers' Compensation governs exclusively --

THE COURT: The only -- the only parts of the statute that deals with exclusivity is 440.11.

Is that the only place that mentions it?

MR. ANDERSON: No.

MS. COLLINS: I -- that is the -- that's the -- the -- he's talking about exclusivity of the Department to deal with those issues that are exclusively covered by the Workers' Compensation statute.

THE COURT: Well, how can you say that collecting and receiving payment by the insurance worker is not covered when it specifically says under Rule 69 L that it is covered? That's my -- my

problem is I totally agree with you that if this is the only remedy, there is no remedy. Okay?

And I -- there's absolutely no question; that was the reason I asked him that question first, because then this statute providers no remedy.

And ultimately it's going to be up to the appellate court to tell us one way or another, is there no remedy for this or not?

If somebody does have -- just what I said. If somebody get a bill for $200,000 and they're under medical care and it causes them to have a mental breakdown, are we saying that there is no liability --

MS. COLLINS: Yeah --

THE COURT: -- and he's saying no, there isn't.

MS. COLLINS: And I think there's a superceding question, which is what does Workers' Compensation cover. And then of those things that it covers, the Department has exclusive jurisdiction to deal with those things.

I think reading the statute the way he's wanting you to read it is asking you to ignore the importance of 440.11 that establishes the field upon which Workers' Compensation preempts everything else. And on its terms there, in 11, it doesn't

preempt this. It doesn't mention the rights of injured workers, as it relates to providers.

THE COURT: Okay.

MS. COLLINS: That's the --

THE COURT: Well --

MS. COLLINS: -- statute.

THE COURT: And that's between -- and under the rule -- which under Statute 441311 C, and it says "Department determines --" okay.

Under 44011 C it says, "The Department has the exclusive jurisdiction to decide any matters concerning reimbursement, utilization, et cetera."

Then under 13 11 C, "Department determines health care provider has engaged in a pattern of utilization or violation of the statute."

So clearly it mentions the health care provider --

MS. COLLINS: It does; I believe it's just subsumed by the section that says what Workers' Compensation covers the field on, and the Department has exclusive -- they have to be read together.

THE COURT: Well --

MS. COLLINS: And there is no -- it does not make itself -- it doesn't cover the field with respect to -- if it did, it would be -- if it said

that Workers' Compensation is the exclusive remedy between providers and employees, he'd be absolutely right. But that --

THE COURT: Health care providers.

MS. COLLINS: Right. That is the primary question. Does it provide the exclusive remedy. That section governs that.

THE COURT: Now, are you saying that the exclusive remedy, that 44011 is the only place where they talk about exclusive remedies?

MS. COLLINS: It says exclusiveness --

THE COURT: 'Cause that is --

MS. COLLINS: -- liability --

THE COURT: -- that's between employer and employee.

MS. COLLINS: And also provider and carrier. Look at the last section of that --

THE COURT: Okay.

MS. COLLINS: -- of that statute.

MR. ANDERSON: With all due respect --

MS. COLLINS: Excuse me just a second.

(Simultaneous speakers; not reportable.)

THE COURT: Gentleman and ladies, we have got to wrap this up. I'm trying to give -- but you know, here's -- ultimately there is no answer.

Okay? That's where we are; right? There is no answer.

There has been no appellate decision, there has been no Supreme Court ruling, there hasn't even been a District or Circuit Court opinion, where another judge has said, this is what I think, he or she thinks, this is what I think this means.

I mean, because you both have a perfectly good legitimate argument; all right? Your argument is it doesn't -- it doesn't exclude health care versus employee.

And you have a perfectly good argument to say well, the rule says that between the health care provider and the employer, that these are the violations that are covered, and one of these are collecting and receiving payments from the injured party. So --

MR. ANDERSON: Black and white.

THE COURT: So ultimately --

MS. COLLINS: Ultimately the statute prevails; not the rule.

The statute, 440.11, governs what Workers' Compensation covers.

THE COURT: That's what I'm asking you.

Is there anywhere else in the Comp statute that

deals with exclusivity of the remedies to the parties?

MS. COLLINS: Yes. That's the statute that does.

THE COURT: And that's as to liability --

MS. COLLINS: Yes.

THE COURT: Okay. And that's their point. Their point is, that's true as to liability, but the question is does that also then go to when the rule says collecting and receiving payment from the injured party.

MR. ANDERSON: Jurisdiction's different than liability.

THE COURT: I understand what you're saying, and I -- and it surprises me there's never been a case that dealt with this. All right.

MR. ANDERSON: The supreme -- Florida Supreme Court case comes pretty close. It essentially says things that are covered by the statute, Article V Courts have said they don't have subject matter jurisdiction. It's quoted there, it's in Sanders, it says its general, broadest and generic terms is exactly what the Florida Supreme Court says.

The statute, it doesn't -- there's no mode for statutory interpretation. It says what it says.

The rules are implemented, and the rules say what they say.

MS. COLLINS: Right. And the statute doesn't say that Workers' Compensation preempts and excludes any remedy from injured workers to providers. You have to read that into the statute. The statute does not say that.

It says that -- with respect to all the other claims in 44011, it does not say that with respect to this claim.

It's asking to put language in the statute that does not exist.

MR. ANDERSON: It's there.

THE COURT: Well -- all right.

Let me put on the record where I am.

Under 44011, the exclusivity of liability, the liability of the employer, as we said earlier, described under 44011 shall be exclusive in place of all other liability, including vicarious liability.

So we're all in agreement on that, as to an employer and any third-party tortfeasor, and to the employee. That's what deals with that.

The Court agrees with the Plaintiff that there doesn't appear to be any remedy for the employee under 44013 11 C, which specifically states, "The

Department has exclusive jurisdiction to decide any matter concerning reimbursement, or to resolve any overutilization dispute under Subsection 7, and decide any question of overutilization under Subsection 8.

44013 11 C goes on to say under Subsection 8, "If the Department determines that a health care provider has engaged in a practice of overutilization or violation of this chapter or rules adopted by the Department, including the pattern or practice providing treatment in excess of the practice parameters and protocols of treatment, may impose one of the following penalties, including an order barring the provider from payment under this subsection.

Under Rule 60 L 39.001, a violation of this rule shall include collecting or receiving payment from an injured party in violation of 440.1313 A.

Based on the rule and the statute, the Court grants the Motion of the Defendant regarding judgment on the pleadings regarding the subject matter jurisdiction.

The Defense will prepare the order. The parties will review what I just said in the transcript and make that part of the order, and then

the parties then may proceed how they determine is necessary.

MR. ANDERSON: Thank you, your Honor.

MS. COLLINS: Thank you, your Honor.

THE COURT: And Madam Court Reporter, go ahead and put this on.

The Court's ruling in this matter recognizes that this ruling then provides no remedy for the employee regarding being billed inappropriately by health care provider, and that is the matter the Court believes that the appellate courts need to take up and rule in this decision.

Prepare the order, send it over to opposing counsel. Obviously you're not in agreement with the ruling, but if you agree to the language that I've used, then you can submit it on JAWS with a cover letter.

If you don't agree on the language, then you can submit it, each one of you, with your own proposed order.

But I know what it is, that -- basically what I said is where I am.

And I understand what the rule says and what the statute says, and I also understand where the exclusivity factor falls.

And I think you both have more than adequate arguments to make at the next level, and I compliment all of you on the fine job that you've done to prepare me on this matter, and hopefully this matter will be resolved in the near future. Thank you all.

MS. COLLINS: Thank you, your Honor.

MR. ANDERSON: Thank you.

MS. EISENBERG: Thank you, your Honor.

THE COURT: Court's adjourned.

(Court adjourned at 12:07 p.m.)

- - -

REPORTER'S CERTIFICATE

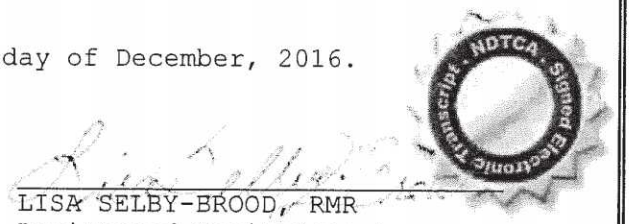
STATE OF FLORIDA)

COUNTY OF PINELLAS)

I, Lisa Selby-Brood, Registered Merit Reporter, certify that I was authorized to and did stenographically report the proceedings herein, and that this transcript is a true, complete and accurate record of my stenographic notes.

I further certify that I am not a relative, employee, attorney or counsel of any of the parties, nor am I a relative or employee of any of the parties' attorney or counsel connected with the action, nor am I financially interested in the outcome of this action.

WITNESS my hand this 7th day of December, 2016.



LISA SELBY-BROOD, RMR
Registered Merit Reporter

IN THE CIRCUIT COURT OF THE THIRTEENTH JUDICIAL CIRCUIT
IN AND FOR HILLSBOROUGH COUNTY, FLORIDA, CIVIL DIVISION

PATTY DAVIS,
on behalf of herself and others
similarly situated,

Plaintiff,

v.

LABORATORY CORPORATION OF AMERICA, and LABORATORY CORPORATION OF AMERICA HOLDINGS,

Defendants.
_____/

CASE NO.: 15-CA-007914

DIVISION: A

CLASS REPRESENTATION

PLAINTIFF'S SUPPLEMENT TO RESPONSE IN OPPOSITION TO DEFENDANTS' MOTION FOR JUDGMENT ON THE PLEADINGS

Plaintiff, PATTY DAVIS, an individual consumer, on behalf of herself and others similarly situated, through her undersigned counsel, hereby files this supplemental response in opposition to *Defendants' Motion for Judgment on the Pleadings*, and states that the Defendants' motion, in conjunction with the *Defendants' Reply in Support of Motion for Judgment on the Pleadings*, arguing that this Court lacks subject matter jurisdiction because there is no private right of action under the Florida Consumer Collection Practices Act ("FCCPA") for any matters that are related to the Workers' Compensation Law, should be denied for the following additional reasons:

In their Reply, Defendants argue that this Court's ruling on the Motion for Judgment on the Pleadings should be controlled by a ruling made by another court in this circuit in a similar case. As will be more fully argued at the hearing to be held on March 28, 2017, Judge Wolfe's ruling, which is being challenged on appeal, misreads the plain language of the relevant statutes. (A copy of the notice of appeal in the other case is attached hereto as Exhibit A.) When making

03/23/2017 4:14 PM Electronically Filed: Hillsborough County/13th Judicial Circuit Page 1

his ruling, which was based on a combination of §440.13(8)(b) and §440.13(11)(c), see pages 62 through 64 of the transcript attached as Exhibit B to Defendants' Reply, Judge Wolfe expressed concern at the result, acknowledging that the interpretation argued by the Defendants leaves an injured employee with no remedy for a separate and distinct wrong. This concern is clearly remedied when the plain language of the statutes at issue is reviewed, instead of select portions taken out of context.

Contrary to the suggestion made by the Defendants, Judge Wolfe's ruling in another matter is not binding on this Court. This rule is even more applicable in a situation such as the one confronting this Court in the instant case, where there are no appellate decisions on-point. In that situation, this Court is entitled to review the applicable law for itself and reach its own conclusion. McGauley v. Goldstein, 653 So. 2d 1108, 1109 (Fla. 4th DCA 1995) (citations omitted) ("When there is no binding precedent from the supreme court or this court, a trial judge is bound to follow the decisions of other district courts of appeal on point. In the absence of other district court precedent, the judge must make an independent exercise of judgment.")

As argued in Plaintiff's Response in Opposition to Defendants' Motion for Judgment, Florida's Workers' Compensation Law does not require an injured worker to give up any causes of action against a medical provider for wrongs committed by the medical provider. Where the Florida Consumer Collection Practices Act establishes a civil cause of action for such subsequent wrongs, there is nothing in the Workers' Compensation Law abrogating those right to that independent cause of action between the injured worker and the medical provider/debt collector.

03/23/2017 4:14 PM Electronically Filed: Hillsborough County/13th Judicial Circuit Page 2

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the undersigned counsel electronically filed the foregoing using the Florida ePortal filing system that will generate a Notice of Electronic Filing to the following at their designated email addresses, on this 23rd day of March, 2017.

Carol A. Licko
Florida Bar No. 435872
James L. VanLandingham
Florida Bar No. 106761
HOGAN LOVELLS US LLP
600 Brickell Avenue, Suite 2700
Miami, FL 33131
Email: carol.licko@hoganlovells.com; james.vanlandingham@hoganlovells.com

Steven F. Barley, Esquire
Elizabeth S. Walden, Esquire
Hogan Lovells US LLP
100 International Drive, Suite 200
Baltimore, MD 21202
Email: steven.barley@hoganlovells.com; elisabeth.walden@hoganlovells.com
[Attorneys for Laboratory Corporation of America and Laboratory Corporation of America Holdings]

Christa L. Collins, Esquire
Florida Bar # 0381829
Email: service.clc@harmonwoodslaw.com;
clc@harmonwoodslaw.com
Kathryn Lee, Esquire
Florida Bar #0675660
Email: service.kl@harmonwoodslaw.com;
kl@harmonwoodslaw.com
Harmon, Woods, Parker & Abrunzo, P.A.
110 North 11th Street, 2nd Floor
Tampa, Florida 33602
Telephone: (813) 864-1762
Facsimile: (813) 222-3616
Counsel for Plaintiff

03/23/2017 4:14 PM Electronically Filed: Hillsborough County/13th Judicial Circuit Page 3

IN THE CIRCUIT COURT OF THE THIRTEENTH JUDICIAL CIRCUIT
IN AND FOR HILLSBOROUGH COUNTY, FLORIDA
CIVIL DIVISION

PATTY DAVIS,
on behalf of herself and others
similarly situated,

Plaintiff,

v.

SHERIDAN HEALTHCARE, INC.
and SHERIDAN RADIOLOGY
SERVICES OF PINELLAS, INC.,

Defendants.
_____/

CASE NO.: 15-CA-009927

DIVISION: G

CLASS REPRESENTATION

NOTICE OF APPEAL

NOTICE IS GIVEN that PATTY DAVIS, Plaintiff/Appellant, on behalf of herself and others similarly situated, appeals to the Second District Court of Appeal the order of this court deemed rendered, pursuant to Florida Rule of Appellate Procedure 9.020(i), on January 24, 2017. Conformed copies of the Final Order Dismissing Amended Complaint with Prejudice, dated December 30, 2016, and the Order Denying Plaintiff's Motion for Rehearing, dated January 24, 2017, are attached as Composite Exhibit A. The nature of the order is a final order dismissing the Plaintiff's Amended Complaint on the grounds that the trial court lacks subject matter jurisdiction.

Respectfully submitted,

Christa L. Collins, Esquire
Florida Bar # 0381829
Kathryn Lee, Esquire
Florida Bar #0675660
Counsel for Plaintiff

EXHIBIT
A

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the undersigned counsel electronically filed the foregoing using the Florida ePortal filing system that will generate a Notice of Electronic Filing to the following at their designated email addresses, on this 15th day of February, 2017.

David S. Johnson, Esquire
Shook, Hardy & Bacon L.L.P.
100 North Tampa Street
Suite 2900
Tampa, FL 33602
email: ddjohnson@shb.com; sanderson@shb.com; aglisson@shb.com; ejmeyers@shb.com
[*Counsel for Defendant, Sheridan Radiology Services of Pinellas, Inc.*]

Susan N. Eisenberg, Esquire
Jennifer T. Williams, Esquire
Cozen O'Connor
200 South Biscayne Blvd., Suite 4410
Miami, FL 33131-1714
Email: seisenberg@cozen.com; Jtwilliams@cozen.com
[*Counsel for Defendant, Sheridan Healthcare, Inc.*]



Christa L. Collins, Esquire
Florida Bar # 0381829
Email: service.clc@harmonwoodslaw.com;
clc@harmonwoodslaw.com
Kathryn Lee, Esquire
Florida Bar #0675660
Email: service.kl@harmonwoodslaw.com;
kl@harmonwoodslaw.com
Harmon, Woods, Parker & Abrunzo, P.A.
110 North 11th Street, 2nd Floor
Tampa, Florida 33602
Telephone: (813) 864-1762
Facsimile: (813) 222-3616

Counsel for Plaintiff

03/23/2017 4:14 PM Electronically Filed: Hillsborough County/13th Judicial Circuit Page 5

IN THE CIRCUIT COURT OF THE THIRTEENTH JUDICIAL CIRCUIT
IN AND FOR HILLSBOROUGH COUNTY, FLORIDA
CIVIL DIVISION

PATTY DAVIS,
on behalf of herself and others
similarly situated,

Plaintiff,

v.

SHERIDAN HEALTHCARE, INC.,
and SHERIDAN RADIOLOGY
SERVICES OF PINELLAS, INC.,

Defendants,
_____/

CASE NO.: 2015-CA-009927

CLASS REPRESENTATION

FINAL ORDER DISMISSING AMENDED COMPLAINT WITH PREJUDICE

THIS MATTER came before the Court for hearing on December 7, 2016, on Defendants' Motion for Judgment on the Pleadings for Lack of Subject Matter Jurisdiction. The Court, having considered the Motion, Plaintiff's written response, argument of counsel and being otherwise fully advised in the premises, finds as follows:

1. Plaintiff's Amended Complaint is a two-count putative class action seeking declaratory and injunctive relief in Count I, and damages under the Florida Consumer Collection Practices Act (Fla. Stat. § 559.72 and 559.77) in Count II, based on Defendants' alleged violation of Florida Statute § 440.13(13)(a).

2. The Court finds that it does not have subject matter jurisdiction because the Worker's Compensation Law places exclusive jurisdiction with the Florida Department of Financial Services when providers bill injured employees in violation of the Worker's Compensation Law. In making this ruling, this Court recognizes that this ruling then provides no remedy for the employee regarding being billed inappropriately by the health care provider and

EXHIBIT
A

03/23/2017 4:14 PM Electronically Filed: Hillsborough County/13th Judicial Circuit Page 6

that is a matter the Court believes the appellate courts need to take up and rule on in this decision.

IT IS, therefore, **ORDERED AND ADJUDGED** as follows:

1. Defendants' Motion for Judgment on the Pleadings is **GRANTED.** Both counts of the Amended Complaint are hereby dismissed with prejudice.

2. The Court reserves jurisdiction to consider any timely filed motions for taxable costs and attorneys' fees.

DONE AND ORDERED in Chambers on this _____ day of December, 2016.

Electronically Conformed 12/30/2016

JUDGE MARK R. WOLFE
Circuit Court Judge

Copies furnished to:
All Counsel of Record

241258 v1

03/23/2017 4:14 PM Electronically Filed: Hillsborough County/13th Judicial Circuit Page 7

IN THE CIRCUIT COURT OF THE THIRTEENTH JUDICIAL CIRCUIT
IN AND FOR HILLSBOROUGH COUNTY, FLORIDA
GENERAL CIVIL DIVISION

PATTY DAVIS,
on behalf of herself and others
similarly situated,

Plaintiff,

v.

SHERIDAN HEALTHCARE, INC.
and SHERIDAN RADIOLOGY
SERVICES OF PINELLAS, INC.,

Defendants.
_____/

CASE NO.: 15-CA-009927

DIVISION: G

ORDER DENYING PLAINTIFF'S MOTION FOR REHEARING

THIS MATTER is before the Court for review without hearing on "Plaintiff's Motion for Rehearing," filed on January 13, 2017. Having considered the merits of the motion, the court file, and applicable law, the Court hereby **DENIES** Plaintiff's Motion for Rehearing.

DONE AND ORDERED in Chambers in Tampa, Hillsborough County, Florida, this _____ day of January, 2017.

ORIGINAL SIGNED
JAN 24 2017
MARK R. WOLFE
CIRCUIT COURT JUDGE

MARK WOLFE, Circuit Judge

Copies to:
Christa Collins
Kathryn Lee
Harmon, Woods, Parker & Abrunzo, P.A.
110 North 11th Street, 2nd Floor
Tampa, FL 33602

David S. Johnson
Shook, Hardy, & Bacon L.L.P.
100 North Tampa Street
Suite 2900
Tampa, FL 33602

Susan N. Eisenberg
Jennifer T. Williams
Cozen O'Connor
200 South Biscayne Blvd.
Suite 4410
Miami, FL 33131

03/23/2017 4:14 PM Electronically Filed: Hillsborough County/13th Judicial Circuit Page 8

IN THE CIRCUIT COURT OF THE THIRTEENTH JUDICIAL CIRCUIT
IN AND FOR HILLSBOROUGH COUNTY, FLORIDA
CIVIL DIVISION

PATTY DAVIS, on behalf of herself and others similarly situated,

Case No. 15-CA-007914

Plaintiff,

v.

LABORATORY CORPORATION OF AMERICA and LABORATORY CORPORATION OF AMERICA HOLDINGS,

Defendants.
_____/

FINAL ORDER OF DISMISSAL FOR LACK OF SUBJECT-MATTER JURISDICTION

THIS CAUSE having come on to be heard on Defendants' Motion for Judgment on the Pleadings at a one-hour special-set hearing on March 28, 2017, and the Court having reviewed the Motion and the extensive briefing of the parties, heard the argument of counsel, and being otherwise fully advised in the premises, it is hereby **ORDERED AND ADJUDGED as follows:**

Defendants' Motion for Judgment on the Pleadings is hereby **GRANTED.**

This action is **DISMISSED** for lack of subject-matter jurisdiction for the

reasons set forth in the hearing transcript.

DONE AND ORDERED in Chambers at Hillsborough County, Florida this ____ day of April, 2017.

15-CA-007914 4/6/2017 8:48:38 AM

15-CA-007914 4/6/2017 8:48:38 AM

THE HONORABLE CHERYL THOMAS
CIRCUIT COURT JUDGE

Conformed copies to:

Carol A. Licko, Esq. (carol.licko@hoganlovells.com)
Christa Collins, Esq. (clc@harmonwoodslaw.com)

INSTRUMENT#: 2017170180, BK: 24911 PG: 1805 PGS: 1805 - 1809 05/03/2017 at 03:27:45 PM, DEPUTY CLERK:TJORDAN Pat Frank,Clerk of the Circuit Court Hillsborough County

Filing # 55715581 E-Filed 04/28/2017 10:42:31 AM

IN THE CIRCUIT COURT OF THE THIRTEENTH JUDICIAL CIRCUIT
IN AND FOR HILLSBOUGH COUNTY, FLORIDA
CIVIL DIVISION

PATTY DAVIS,
on behalf of herself and others
similarly situated,

Plaintiff,

vs.

LABORATORY CORPORATION OF AMERICA and LABORATORY CORPORATION OF AMERICA HOLDINGS,

Defendants.
_____/

UCN: 29-2015-CA-007914-14A-001-HC

CASE NO.:15-CA-007914

DIVISION: A

NOTICE OF APPEAL

NOTICE IS GIVEN that pursuant to Florida Rules of Appellate Procedure 9.030(b)(1) and 9.110, Plaintiff PATTY DAVIS, on behalf of herself and others similarly situated, hereby appeals to the Second District Court of Appeal an Order of the Circuit Court in and for the Thirteenth Judicial Circuit, Judge Cheryl Thomas, rendered on April 6, 2017. A conformed copy of this April 6, 2017, order is attached hereto as Exhibit A. The nature of the order is a Final Order dismissing Plaintiff's complaint "for lack of subject-matter jurisdiction."

Dated: April 28, 2017

/s/ J. Andrew Meyer
J. Andrew Meyer, Esq.
FBN 0056766
J. ANDREW MEYER, P.A.
15565 Gulf Boulevard
Redington Beach, FL 33708
Telephone: (727) 709-7668
andrew@jandrewmeyer.com

Christa L. Collins, Esq.
FBN 0381829
Kathryn Lee, Esq.
FBN 0675660
HARMON, WOODS, & PARKER, P.A.
110 North 11th Street, 2nd Floor
Tampa, Florida 33602
Telephone: (813) 864-1762
clc@harmonwoodslaw.com
kl@harmonwoodslaw.com

Counsel for Plaintiff/Appellant

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on April 28, 2017, a copy of the foregoing Notice of Appeal was filed with the Florida ePortal system and that copies were served by email and U.S. Mail on the following attorneys for Defendants: Carol A. Licko, Esq. and James L. VanLandingham, Esq., Hogan Lovells US LLP, 600 Brickell Avenue, Suite 2700, Miami, Florida, 33131, carol.licko@hoganlovells.com and james.vanlandingham@hoganlovells.com, and Steven F. Barley, Esq., and Elisabeth S. Walden, Esq., Hogan Lovells US LLP, 100 International Drive, Suite 200, Baltimore, Maryland, 21202, steven.barley@hoganlovells.com and Elisabeth.walden@hoganlovells.com.

/s/ J. Andrew Meyer
J. Andrew Meyer, Esq.

EXHIBIT A

IN THE CIRCUIT COURT OF THE THIRTEENTH JUDICIAL CIRCUIT IN AND FOR HILLSBOROUGH COUNTY, FLORIDA CIVIL DIVISION

PATTY DAVIS, on behalf of herself and others similarly situated,

Plaintiff,

v.

LABORATORY CORPORATION OF AMERICA and LABORATORY CORPORATION OF AMERICA HOLDINGS,

Defendants.
_____/

Case No. 15-CA-007914

FINAL ORDER OF DISMISSAL FOR LACK OF SUBJECT-MATTER JURISDICTION

THIS CAUSE having come on to be heard on Defendants' Motion for Judgment on the Pleadings at a one-hour special-set hearing on March 28, 2017, and the Court having reviewed the Motion and the extensive briefing of the parties, heard the argument of counsel, and being otherwise fully advised in the premises, it is hereby **ORDERED AND ADJUDGED as follows:**

Defendants' Motion for Judgment on the Pleadings is hereby **GRANTED.**

This action is **DISMISSED** for lack of subject-matter jurisdiction for the

reasons set forth in the hearing transcript.

DONE AND ORDERED in Chambers at Hillsborough County, Florida this ____ day of April, 2017.

Electronically Conformed 4/6/2017

THE HONORABLE CHERYL THOMAS
CIRCUIT COURT JUDGE

Conformed copies to:

Carol A. Licko, Esq. (carol.licko@hoganlovells.com)
Christa Collins, Esq. (clc@harmonwoodslaw.com)

IN THE CIRCUIT COURT OF THE THIRTEENTH JUDICIAL CIRCUIT
IN AND FOR HILLSBOROUGH COUNTY, FLORIDA
CIVIL DIVISION

PATTY DAVIS, on behalf of herself and others similarly situated, Plaintiff, v. LABORATORY CORPORATION OF AMERICA and LABORATORY CORPORATION OF AMERICA HOLDINGS, Defendants.	Case No. 15-CA-007914 Division A

NOTICE OF FILING

Defendants Laboratory Corporation of America and Laboratory Corporation of America Holdings, by and through their undersigned counsel, hereby give notice of filing the hearing transcript of the March 28, 2017 hearing on Defendants' Motion for Judgment on the Pleadings, attached hereto as **Exh. A**.

Respectfully submitted,

/s/ James L. VanLandingham
Carol A. Licko
Florida Bar Number: 435872
carol.licko@hoganlovells.com
James L. VanLandingham
Florida Bar No. 106761
james.vanlandingham@hoganlovells.com
HOGAN LOVELLS US LLP
600 Brickell Avenue, Suite 2700
Miami, FL 33131
Tel: (305) 459-6500
Fax: (305) 459-6550

Steven F. Barley (*admitted pro hac vice*)
Elisabeth S. Walden (*admitted pro hac vice*)
HOGAN LOVELLS US LLP
100 International Drive, Suite 2000
Baltimore, MD 21202
Tel: (410) 659-2700
Fax: (410) 659-2701
steve.barley@hoganlovells.com
elisabeth.walden@hoganlovells.com

Counsel for Defendants Laboratory Corporation of America and Laboratory Corporation of America Holdings

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on May 4, 2017, I electronically filed or caused to be filed the foregoing document using the Florida Courts eFiling Portal and that a true and correct copy of the foregoing was served via e-mail on the same date on the following counsel of record:

Christa L. Collins
Harmon, Woods, Parker & Abrunzo, P.A.
Florida Bar # 0381829
110 North 11th Street, 2nd Floor
Tampa, Florida 33602
Email: clc@harmonwoodslaw.com
Counsel for Plaintiff

/s/ James L. VanLandingham

05/04/2017 1:41 PM Electronically Filed: Hillsborough County/13th Judicial Circuit Page 2

EXHIBIT A

IN THE CIRCUIT COURT OF THE
THIRTEENTH JUDICIAL CIRCUIT
IN AND FOR HILLSBOROUGH COUNTY, FLORIDA
CASE NO.: 15-CA-007914

PATTY DAVIS, on behalf of herself
and others similarly situated,

Plaintiffs,

vs.

LABORATORY CORPORATION OF AMERICA and
LABORATORY CORPORATION OF AMERICA HOLDINGS,

Defendants.

* *

HEARING BEFORE THE
HONORABLE CHERYL K. THOMAS

DATE TAKEN: MARCH 28, 2017
TIME: 1:36 p.m. - 2:36 p.m.
PLACE: 800 EAST TWIGGS STREET
TAMPA, FLORIDA 33602

TAKEN BEFORE: NICOLE M. PAWLICKI, RPR
AND NOTARY PUBLIC

* *

APPEARANCES:

APPEARING ON BEHALF OF THE PLAINTIFF:

CHRISTA L. COLLINS, ESQUIRE
KATHRYN E. LEE, ESQUIRE
Harmon, Woods, Parker & Abrunzo, P.A.
110 North 11th Street
2nd Floor
Tampa, Florida 33602
clc@harmonwoodslaw.com
kl@harmonwoodslaw.com

APPEARING ON BEHALF OF THE DEFENDANT:

STEVEN F. BARLEY, ESQUIRE
JAMES VAN LANDINGHAM, ESQUIRE
Hogan Lovells US LLP
600 Brickell Avenue
Suite 2700
Miami, Florida 33131
steve.barley@hoganlovells.com
james.vanlandingham@hoganlovells.com

* * * * * * * * * * * * * * * * * * * *

THE COURT: We are here for Patty Davis versus Laboratory Corporation of America, Laboratory Corporation of America Holdings, Case No. 15-CA-007914.

If you all will announce for the record.

MS. COLLINS: Christa Collins for the plaintiff.

MS. LEE: Along with Kathryn Lee for the plaintiff.

MR. BARLEY: Steven Barley and James Van Landingham for the defendant.

MR. VAN LANDINGHAM: I'm James Van Landingham.

THE COURT: Okay. We're here for defendant's motion for judgment on the pleadings.

You may proceed.

MR. BARLEY: Thank you, your Honor.

The motion is based, as your Honor is aware, on the notion that there's lack of subject matter jurisdiction to decide this particular issue. It's our view that the exclusive jurisdiction to deal with this workers' comp issue is with the Department of Financial Services.

I'd like to start with the complaint itself. The complaint, clearly, is based solely on an alleged violation of the workers' compensation statute. So if you look, for instance, at paragraph ten of the complaint, the allegation is plaintiff brings this class action on behalf of all injured employees in the state of Florida who within the two years preceding this action

were unlawfully billed by Lab Corp. for medical services provided in connection with --

THE COURT: Slow down a little bit for the court reporter.

MR. BARLEY: I apologize. Who were unlawfully billed by Lab Corp. for medical services provided in connection with their work-related injuries in violation of the workers' compensation statutes and the FCCPA.

And so the idea here is that there was -- there's a statute under the workers' compensation broader statutory scheme that prohibits providers from sending -- from collecting or receiving patient -- payments from patients when they're covered by the workers' compensation insurance system.

The -- I think there's two important things about that particular statute that I'd like to bring to your attention.

The first is there's no private right of action under that workers' compensation statute. So there's no ability to bring a claim under the workers' compensation statute for sending a bill to the patient supposedly in violation of the statute.

The second thing is that, other than the statute, there's nothing wrong with sending a bill to a patient you've rendered medical services to. So this action only

exists because of that statute and can't be brought under that statute itself.

So what the plaintiff has done here is try to bring the action under a wholly different statute, the FCCPA, the Florida Consumer Collection Practices Act statute.

The claim is, essentially, that you're trying to collect a debt unfairly that doesn't exist because it doesn't exist under the workers' compensation statute. And the way we get to the notion of exclusive jurisdiction is by a very basic reading of the statue itself, and I'll walk through that in a minute.

I'd like to start first with talking a little bit about the workers' compensation system. And that is that system, as your Honor, I'm sure, knows much better than I do, has been in place for quite some time and consists of a series of compromises and horse trading, if you will, to allow a more efficient system to deal with workplace injuries. So it's supposed to be comprehensive in scope. And in passing the workers' compensation law, the legislature made clear that they wanted the system to be self-executing, they wanted it to be efficient, and they wanted it not to be economically burdensome to those that are participating in it. So it created a system where the issues that arise in the workers' comp arena are supposed to be adjudicated by the Department of Financial

Services.

And so in -- we turn to the notion of subject matter jurisdiction. Now, as your Honor also knows, subject matter jurisdiction is not an adjudication of the merits of an action, it's not a motion to dismiss for failure to state a claim. It is that the court lacks the power to decide the dispute because the proper authority to decide the dispute is somewhere else. And, in this case, as I'll explain, we believe that the proper authority to decide is the Department of Financial Services because the legislature made it very explicit in the statute that's what's supposed to happen.

In the Supreme Court of Florida, in a case called Sanders, which we cited, is very clear that matters that arise in the workers' compensation system are supposed to be dealt within that system. In that case, the Supreme Court said that in a vast variety of disputed matters courts have held in very broad, general, and generic terms that Article V courts have no subject matter jurisdiction to adjudicate disputes involving workers' compensation issues. So the Supreme Court has recognized the deference that's supposed to be provided to that agency when we're dealing with workers' comp issues.

So I'll walk through the specific statutory scheme. I think it's helpful to understand how we get to this.

Do you have the statute?

MR. VAN LANDINGHAM: The complete?

MR. BARLEY: Section 13.

MR. VAN LANDINGHAM: Okay. This is Section 13.

MR. BARLEY: Here is -- if I can, this is the statutory section we're talking about here.

Before I get to that, I did want to mention, as we put in our papers, that this particular issue of there not being subject matter jurisdiction over these disputes, so far as we can tell, there's only been one other case in this state where the issue has come up, where someone has raised this, and it was actually in this court in front of Judge Wolf, and it involved the very same plaintiff we have here and same plaintiff's counsel. And, in that case, Judge Wolf, I think, probably about two months ago, I think it was in early or mid January, determined that there was not subject matter jurisdiction in the court system and the case should be dismissed on that ground. So he adopted, basically, the arguments that we've raised in our papers here.

So if we look at the statute, there's, essentially, four provisions that I think that will walk us through why there's no subject matter jurisdiction here.

The first is Section 13(a), which it's on page 13, your Honor.

THE COURT: It's in your book.

MR. BARLEY: I didn't provide that book. That was from Mr. Collins.

MS. LEE: It's on page 15.

THE COURT: I have it on the list.

MR. BARLEY: So, there, it's really the second sentence. It says a healthcare provider may not collect or receive a fee from an injured employee within the state except as otherwise provided by this chapter.

It also shows that, in B, that there are fee schedules that a healthcare provider is supposed to abide by and supposed to follow procedures and things when it's providing services to people who are within the workers' compensation system.

So the idea that this applies to healthcare providers like Lab Corp. can be found in Section 3(f), which is on page --

MR. VAN LANDINGHAM: Page three.

MR. BARLEY: Page three of what I handed up to you. I don't know what it is in that book.

3(f) says, very simply, by accepting payment under this chapter for treatment rendered to an injured employee, a healthcare provider consents to the jurisdiction of the department as set forth in Subsection 11.

And then it goes on further to talk about, you know, submitting records and agreeing to comply with decisions of the department.

But the important thing from our perspective is that if a healthcare provider is accepting payment and providing services to people who are part of the workers' compensation system, then they're subject to the jurisdiction of the Department of Financial Services as set forth in Subsection 11.

So you then turn to Subsection 11 so you can see, well, what's the jurisdiction of the department here. We get to Subsection 11, and that's on page --

MS. COLLINS: 11 and 12 of the copy in the book, your Honor.

MR. BARLEY: First, Subsection A says the department may investigate healthcare providers to determine what -- whether they're complying with the chapter and rules adopted by the department, whether they're engaged in overutilization, whether the providers are engaging in improper billing practices and other things. So it gives the department broad powers to investigate these healthcare providers who, by accepting payment, are subject to the jurisdiction of the department.

And, critically, in Subsection C, it says the

department has exclusive jurisdiction to decide any matters concerning reimbursement, to resolve any overutilization dispute under Subsection 7, and to decide any questions concerning overutilization under Subsection 8. So it says the department has jurisdiction over the healthcare providers. It can investigate healthcare providers for things including improper billing practices in compliance with the rules.

And then, in Subsection 11(c), it says that it has the ability to -- it has exclusive jurisdiction to decide any questions concerning overutilization in Subsection 8.

So then you look at Subsection 8 to determine what they mean by overutilization and what's subject of that jurisdiction.

MR. VAN LANDINGHAM: That's page 8 of our handout.

MR. BARLEY: And, if we look at 8(b), it says if the department determines that a healthcare provider has engaged in a pattern or practice of overutilization or a violation of this chapter or rules adopted by the department, including a pattern or practice of providing treatment in excess of the practice parameters or protocols of treatment, it may impose one or more of the following penalties. And then it says they can be barred from payment, they can be de-authorized from the care under review, payment can be denied in the future, they

can get an administrative fine, and licensing authorities can be notified. So there are pretty stiff penalties they can impose if they choose to do that.

The important language there, in our view, is that if the department determines that a healthcare provider has engaged in a violation of this chapter or rules adopted by this department, they have exclusive jurisdiction to decide that, and to make, if they choose, to impose these penalties.

If there was any doubt about whether it had this power and whether this particular dispute is subject to that, all you need to do is look at the regulations that were promulgated underneath this particular statutory section.

So if we look at 69L-34.001.

MS. LEE: Tab 24, your Honor.

MR. BARLEY: So the statute, as we've just seen, over which the -- over which the department has exclusive jurisdiction is a healthcare provider engaging in a pattern or practice of violating this chapter or rules adopted by the department. So if we look at the -- if we look at this particular regulation, it makes clear that the department views precisely the claim here as a violation that it is supposed to deal with. So the term violation is used in 8(b) in the statute. And if we look

at Subsection 6 of this regulation, it says violation is defined as a provider's noncompliance with Chapter 440 FS and division rules which shall include, and if you go about halfway down, it specifically mentions the statute that they're claiming here was violated; namely, it says collecting or receiving payment from an injured worker in violation of Section 440.13 (13)(a). That's the section that they're going under here, exactly that one.

So you have a regulation that says, okay, we'll interpret what violation under the statute means, and a violation means exactly the claim -- the statute that they claim is violated here.

And then making it even more compelling, as we pointed out in our papers, there are two avenues by which someone who gets one of these bills can pursue some redress.

One is under 69L-34.003. Any person, so, presumably, Ms. Davis or her attorneys or anyone, could submit a report of a violation, using the same term again, as defined in this chapter to the Office of Medical Services, and it goes on. And if you look at Subsection 4(i), it specifically refers to providing supportive documentation, including copies of collection letters sent to the injured worker from the provider or a collection agent acting on behalf the provider seeking

payment for covered medical services authorized by the carrier. It's exactly what's attached to the complaint, are those type of letters. And what the regulation says is, in essence, you need to go through the exclusive jurisdiction of the department, and if you want to make a complaint about a violation, submit them to us. That's what that regulation says.

And if Ms. Davis felt aggrieved herself, she could also go through the mandatory mediation process set forth in 69L-26.004. She would have the right to do that as well if she felt particularly aggrieved about that.

So, here, we've got this complaint which has been ginned up into a punitive class action complaint because Ms. Davis got a letter claiming she was -- she owed for these services, but where there's no harm that has been articulated to her. She didn't make any payment. She has, you know, no other issues that we're aware of, it's merely she got this letter. So she's claiming the statute was violated.

As I just went through, the statutory scheme is very clear that issues relating to the violations of the workers' compensation statute specifically related to this issue, the sending of these letters, is something the department has the exclusive jurisdiction to deal with. That makes sense if you think it's the

legislature's determination, obviously, to -- you know, why they structured it this way. I mean, it makes sense when you think about what I talked about in the beginning, which is the overall idea behind the workers' compensation statute. You know, you have -- you would want -- I would think you would -- if the legislature from a policy standpoint would want to make sure that there's a consistent interpretation of the statute, there's a consistency in terms of how the violations are dealt with, that you also want to make sure that you're maintaining and incentivizing healthcare providers to participate in the system. If they were subject to class action lawsuits on a regular basis because a letter like this went out, you could see a lot of them saying I'm not going to participate, that's too much risk. So you can see the legislature, from a policy standpoint, saying it makes sense to structure it this way. It also, importantly, reinforces the goals of the workers' compensation system for -- to have it adjudicated by the department because it's more efficient, it's not a burden, as the legislature said, you know, these issues should not be, and it's self-executing in that the department can deal with it.

Now, the plaintiff -- we may hear more arguments. I see lots of audiovisual things over there, boards, but,

in their briefing, they've raised a few arguments. One is that we've misinterpreted the statute, which, as I've shown your Honor, it's all contained in one section dealing with how healthcare providers are treated under the workers' compensation statute, and all of it flows together in a very rational way. So I'm at a loss to understand what the argument is about misinterpretation of the statute.

We've also heard that the workers' compensation statute somehow is supposed to limit the liability only of employers who are functioning under that umbrella. And, as I showed your Honor, Section -- Subsection 3(f) clearly makes this applicable to healthcare providers. And we're not talking about a limitation of liability here, like you are with the employer. We're talking about jurisdiction and who should be deciding the issues related to the sending of these bills.

We also heard that the FCCPA permits a plaintiff to proceed based on the violation of another statute. That may be true in some circumstances, but I have not seen a case and the plaintiffs haven't come up with a case where the FCCPA somehow trumps a statute that says exclusive jurisdiction for that matter lies somewhere else.

So cases like the Kaplan case they cite simply don't apply to this. It's an explicit statement by the

legislature that the jurisdiction is elsewhere. So that also is a reason why, you know, the idea that there's preemption or there's some carveout from the FCCPA, some exemption, those arguments have been made, that doesn't apply either. We're not arguing preemption, we're not arguing there's an exception to FCCPA. We're merely arguing that this particular issue they've raised should be over at the Department of Financial Services.

They have also claimed that there's some sort of separate harm under the FCCPA that's supposed to be, you know, redress. There is no separate harm. The only claim here is there was a violation of the statute, and they haven't alleged any separate harm, they haven't alleged anything other than she got this bill and she shouldn't have gotten the bill in the mail.

The last thing they've argued is that this is what they call a reimbursement dispute, which is defined as between healthcare provider and a carrier and somehow shouldn't involve a patient or an injured person under the workers' comp statute, and that's actually the wrong section. Section 8 doesn't -- Section 11 and Section 8 -- excuse me. Section 8(b) doesn't refer to reimbursement disputes. It's actually Section 7 that deals with reimbursement disputes. So that doesn't even apply in this situation.

So unless your Honor has any questions, I'm sure I'll have some rebuttal points if I'm permitted, but that would be my argument.

THE COURT: Response? And when you start out, if you can tell me how this case is different from the one that was previously heard since it does involve the same plaintiff.

MS. COLLINS: Sure. I'll just turn these then.

MS. LEE: Can you see these, your Honor?

THE COURT: I can. Can you see through me?

MR. BARLEY: I can see. I can move around.

MS. COLLINS: The case in terms of its infrastructure and legal theory is the same as the case that Judge Wolf heard. It's having argued that motion and hearing essentially the same argument here, which cobbles together sections and subsections from a host of different statutes is quite easy to get balled up in those statutes, and this argument related to Subsection 8 and whether exclusive jurisdiction exists for the department to deal with any violation of the chapter and rules. That is exactly where Judge Wolf got hung up. And, as I'll show the Court, it's a misreading. It actually violates the rules of statutory restruction. I understand completely how it happened because this argument is fashioned by pulling from different statutes,

sections from different statutes, and putting them together in an argument that appears very cohesive at high altitude, but doesn't withstand actually diving into the provisions of the statute and reading what the statutes say, because this argument is inconsistent with the provisions of the statute. So that's the answer there in short order.

THE COURT: So is it a different bill?

MS. COLLINS: Yes, by a different provider. This is --

THE COURT: A different provider.

MS. COLLINS: Yes.

THE COURT: Now that answers my question.

MS. COLLINS: And this is more than a situation where an injured worker like Ms. Davis receives a letter in the mail. This is a situation where providers send multiple letters, send injured workers out to collection bureaus who then report negative information to their credit agencies and reflects a systemic practice which resulted in Ms. Davis being dunned by collection bureaus twice after the lawsuit was filed.

So -- and in some instances, these injured workers who would be members of the class actually pay those bills, in being intimidated that they're being threatened with damage to their credit rating. Some people pay out

of pocket and have actual damage. So it's more than a simple letter in the mail and who cares. It is a -- it is a systemic practice of attempting to collect a debt which is not a legitimate debt for the injured worker. And in the context of people who are possibly out of work, they're injured, they're trying to get back to life, which is one of the purposes of the workers' compensation statute. It can be an extremely stressful circumstance.

And so I'd like to just start with this framework. The workers' compensation statute is designed to address the issues between an injured employer -- injured employee, their employer, and the carrier with respect to the benefits that should be paid to that individual.

In the papers, defendants argued that the workers' compensation statute represents a renunciation of all common law rights between everyone who participates in the workers' compensation statute. And that really is the legal theory. Anybody who touches this system is somehow subject to the provisions of the system and no other rights exist.

And I'll just skip ahead quickly. To say that is, actually, completely inconsistent. The statement in the papers and the whole theory behind this is inconsistent with the fact that the system is based on a mutual

renunciation of common law rights and defenses by employers and employees. It doesn't say providers. It doesn't say injured workers as it relates to providers, if the providers break other laws and injure them.

It is a system that is put in place of common law rights that exist between the employee and the employers. That's the intention, to then deliver prompt delivery of benefits to those people who have renunciated their rights by operating inside this workers' compensation statutory scheme. That's the purpose. There's no renunciation of rights for injured workers if they -- if their rights are violated by a provider. And we'll get into those other sections in a little bit.

All of the cases that the defendants cited, including the Sanders case, those are all cases that are dealing with the issue of whether workers' compensation is the exclusive remedy for benefit claims between employer, injured employee, and carrier. Every one of those cases, same situation, dealing with what benefits they're entitled to. And in that circumstance, there's no question, the circuit court has no jurisdiction to consider that issue because that's -- that is what the workers' compensation statute supplants.

Let me just very briefly look at the FCCPA and the -- as it relates to the workers' compensation statute

here. So the FCCPA -- well, actually, let me back up.

Just to reframe the issue, what the court is really being asked is whether the circuit court has subject matter jurisdiction over a suit brought not under the workers' compensation statute, the suit is being brought under the FCCPA, when -- and it's being brought by an injured worker who has been billed, sent to debt collection, reported to credit bureaus, and pursued for payment of bills, medical bills, when the statute makes clear that the injured worker is not responsible for those bills and providers are prohibited from collecting payment or billing those injured workers pursuant to the workers' compensation statute.

This claim is very similar to a case that is in the book at Tab 29, Cliff versus Payco. And in that case, the 11th Circuit was addressing the situation where, under the Higher Education Act, there was a prohibition of billing students for certain obligations. And the court squarely addressed whether the Higher Education Act could be used as a predicate for an FCCPA claim, because the illegitimacy or the illegality of trying to collect that debt that doesn't exist is established by the foundational statute. And the court answered yes, yes, the Health Education Act is a predicate because it makes the debt illegitimate, and then the FCCPA creates a

private right of action for any debtor to bring a claim when any person, including a corporation, claims, attempts, or threatens to enforce a debt when the person knows that the debt is not legitimate.

So just like Cliff versus Payco, that's the situation that we have here.

And the workers' compensation statute is relevant only because it establishes that the debt is not legitimate as the predicate --

THE COURT: But for the workers' compensation claim statute, would this be a violation of the FCCPA?

MS. COLLINS: No, there's nothing in the FCCPA that says that injured workers can't be billed by medical providers. However, there's nothing in the FCCPA, importantly, that excludes injured workers who are billed by medical providers.

So also, I just want to point out, that the legislative purpose of the FCCPA is to provide a remedy, and I'm referring to the Harris versus Beneficial case, this is the Florida Supreme Court at Tab 32. The FCCPA is to provide a remedy for a class of injury where damages are difficult to prove and to dissuade collection practices previously tolerated, to curb abuses in debtor/creditor relationships. And to that end, the statute, which in full is at Tab 22, provides a variety

of relief to address the situation where it's difficult to assess damages but yet there is a wrong, there is a violation.

THE COURT: Is your position that there is a remedy under 440.13 or the workers' compensation --

MS. COLLINS: There is --

THE COURT: -- statute but the plaintiff has an option of bringing it under FCCPA rather than the workers' comp statute?

MS. COLLINS: There is no remedy in the workers' compensation statute. There is --

THE COURT: For an individual plaintiff.

MS. COLLINS: There is no remedy for any injured worker who is billed illegitimately under the workers' compensation statute. It makes the debtor legitimate. It provides no remedy to that injured worker, including if that injured worker actually came out of pocket, being intimidated, and paid the bill. There's nothing in the workers' compensation statute that remedies that situation.

THE COURT: Is that a claim of Ms. Davis?

MS. COLLINS: The claim of Ms. Davis is -- well, let me explain what the FCCPA does. It allows actual damages, it allows statutory damages in a range, depending on the egregiousness of the defendant's conduct

in the sense in which it's systemic. She has been reported to credit and her credit has been damaged. So she did not pay those bills but she is affit for those remedies under the FCCPA that are designed to deal with situations where damages are difficult to ascertain.

And, in addition to that, declaratory and injunctive relief is also part of the FCCPA. And that's important, particularly, where you have a defendant -- we know from answers to interrogatories that we filed with the court yesterday that Lab Corp. has been sued seven times by injured workers, and those cases have all been resolved under the FCCPA for this exact issue on an individual basis.

THE COURT: For workers' comp?

MS. COLLINS: Uh-huh. And we know from answers to interrogatories that we also filed that they have been able to identify over 250 people who were coded as being an injured worker and who were improperly billed under the statute. So this is not an isolated incident where someone just got a letter in the mail. Something much more disturbing and systemic is at issue.

So let me turn then to the provisions of the workers' compensation statute that relate to providers. And we created this chart precisely to overcome the hopping between sections and weaving together of an

argument that is -- appears cohesive but is not rooted in the actual language of the statute.

So as counsel for the defendants cited to you, 440.13 (3)(f) says that the provider who is accepting payment from the carrier, under here at the top line, that provider is consenting to the jurisdiction of the department as set forth in Section 11; right?

And, importantly, Section 11 has two types of jurisdiction for the department. One is permissive; they can investigate if they want to, they don't have to. If they find something -- they do investigate and they find something, they have an option to impose penalties and this other variety of things as between the carrier and the provider. They can do things like penalties, but no remedy dealing with the situation that we have here.

So you have to really look at 11 and drill in carefully to see what part is permissive, where the department can do something if it wants to, it can investigate it or not, or where the department's jurisdiction is exclusive. And the problem with the argument in this case and in the case that was argued previously is that it ignores the fact that Subsection 8 is relevant for exclusive jurisdiction only as it relates to overutilization.

So we'll walk through it. The provider is

consenting to the jurisdiction of the department. Exclusive jurisdiction is set out in 440.13 (11)(c), and it says the department has exclusive jurisdiction to decide any matter concerning reimbursement, and reimbursement specifically between the carrier and the provider. It's not an issue. It doesn't involve our situation here at all.

But in a situation where there's a disagreement, the provider has to go to the department to get it figured out, what they should be entitled to in terms of reimbursement, but that doesn't deal with us here.

The second area of exclusive jurisdiction is overutilization under Subsection 7. And in this circumstance, Subsection 7 actually requires anyone who is aware of -- oh, no, here it is.

This is where a healthcare provider, again, can test either a payment being disallowed by a carrier or an adjustment of a payment from the carrier to the provider. And if they want to dispute that, they have to petition the department to resolve that dispute.

So, again, that's the department taking control of these issues related to overutilization and reimbursement as between the carrier and the provider, nothing with respect to the provider and the injured employee.

And then, they also have exclusive jurisdiction of

any question concerning overutilization under Subsection 8. And only that part of Section 8 dealing with overutilization is in the exclusive jurisdiction of the department; otherwise, we're violating fundamental rules of statutory construction and reading limiting language out of a statute that it's presumed that the legislature put it there for a reason. The reason it's there is that Section 8 dovetails with the permissive jurisdiction because, if you look at Section 8, it addresses overutilization, which is the only thing there's exclusive jurisdiction for, but it also addresses violations of the rules and other provisions of the chapter. Well, if you look under permissive jurisdiction, that's what the department can elect to investigate or deal with or not. So when you read all these together, which is fundamental to statutory construction, you can't read out the fact that Subsection 8, it's application to the issue of exclusive jurisdiction is specifically limited only to overutilization. And that's defined as where a carrier disallows payment or treatment is in excess of the practice parameters and protocols for the provider doing treatment.

So these -- again, as I say, these are issues between the provider and the carrier and they're conduct

in terms of how they bill the carrier for their services. But nothing in 8 -- well, I should say that this section, which references 8, references only the aspect of overutilization, not references to violations of the rules or other sections of the statute, which falls under the department's permissive jurisdiction.

And this, as I should point out again, it's the hopping between all the subsections of 13, which, understandably, led to confusion and the conclusion that there was no subject matter jurisdiction because the court failed to -- the court didn't read the limiting language in 8 and only -- and read 8 to say that any violation of the rules or chapters falls within exclusive jurisdiction, and that's inconsistent with 11(c).

My colleague is telling me I didn't read 11 -- excuse me. Yes.

So it takes looking at all of these statutes, the specific language, the limiting language, and then reading them together that confirms that in fact there's nothing in the workers' compensation statute that divests this court of the jurisdiction it has to deal with FCCPA claims where an illegitimate debt has been billed to an injured worker.

The other contention that the defendants have made is that plaintiff had a mandatory requirement to bring

her complaint through the employee assistance and ombudsman office. I don't have a chart on the statute, but I do have it reprinted, and it also appears at Tab 18 in our notebook.

The suggestion defense counsel has made is that that is a mandatory process. As the statute says under Section 1(a), it says this chapter shall be construed to permit injured employees and employers or the employer's carrier to resolve disagreements without undue expense. And above that, it says that is to effect the self-executing feature of the workers' compensation law, which, again, is addressing the triangle between employer, employee, carrier, and how -- what workers' compensation benefits should be paid and in what amount to the employee.

The only mandatory provision related to the employee assistance and ombudsman office is in Subsection 2(a), where it says if at any time the employer or its carrier fails to provide benefits to which the employee believes he or she is entitled, the employee shall contact the office to request assistance. That's just not a situation that we have here because, again, because this is something that is outside the triangle of what workers' compensation is intended to deal with.

This is consistent, entirely consistent, with a

rule that counsel cited earlier, which is at Tab 26 of our book, if you flip to that. The significant thing there, 69L-26.004, even the title of that rule confirms the fact that this is an elective process. If an injured worker has been improperly billed in violation of the statute, they can electively refer it to the department for the department to engage in its permissive jurisdiction to investigate if it chooses to. But there's nothing that requires the injured employee to do that in the language of that rule.

So the implications of the ruling that the defendants are seeking are twofold. As we can see, a provider billing an injured worker is not something that these statutory provisions subsume under the power of the department. Finding that there is no subject matter jurisdiction divests the injured worker of the ability to address that separate wrong through the private right of action granted by the FCCPA, as we saw before. To deal with the fact that they have billed for something that is not legitimate, and we know it's not legitimate because the workers' compensation said it's not a debt of the injured employee, just like the Higher Education Act that we were looking at in Cliff versus Payco.

And, secondly, even workers -- you know, workers intimidated into paying bills they owe, under this

interpretation of the statute would have no remedy to recover funds unlawfully obtained by providers.

THE COURT: If there's permissive jurisdiction, why would they not have a remedy?

MS. COLLINS: This permissive jurisdiction allows the department to investigate if they want to, there's no -- and there's no remedy provided within the department's powers. They don't have the power to order money to be paid back to the injured worker. In fact, in the case before Judge Wolf, defense counsel admitted there is no remedy. There may be penalties that might punish the defendant, but there's no remedy whatsoever for the injured worker who has been billed and possibly paid the debt that wasn't theirs.

THE COURT: Reimbursement is available.

MS. COLLINS: Reimbursement -- well, again, though --

THE COURT: That was a question.

MS. COLLINS: No, reimbursement is not available. That's not one of the powers that the department has under the litany of powers in that subsection, I think it's Subsection 8. Let me go back.

If you look at Tab 17 in our notebook, at page ten, they can bar the provider from paying -- from getting payment under the chapter, de-authorize care, deny

payment for care rendered in the future, levy an administrative fine, and report them to an appropriate licensing facility.

THE COURT: There was not another section that you referred to for reimbursement?

MR. BARLEY: I was referring to Subsection 1. It says an order barring the provider from payment. If they're barred from payment, then, presumably, it's implicit that they have to give the money back because they're not allowed to receive payment.

THE COURT: But it doesn't say that.

MR. BARLEY: It doesn't say that explicitly. Well, it does say they're barred from payment. So I don't know --

THE COURT: But if they've already paid it -- so that's my question to plaintiff's counsel. If they've already paid it, barring them from payment --

MR. BARLEY: But I interpret that, and I would presume the department would interpret it that way too, is if you're barred from payment, you can't keep it, you can't get the payment. That's essentially what it's saying.

MS. COLLINS: That's reading power not contained in the statute. It's not an explicit provision.

Another implication is that because a provider is

touching an injured worker who is part of a workers' compensation system, this would also lend an argument that there are no medical malpractice claims. How do medical malpractice claims arise if everything between anyone who participates in a workers' compensation transaction as an injured worker, provider, if you buy the argument that there's a complete renunciation of common law rights between those individuals, what would happen to workers' compensation claims? The argument simply is inconsistent with the purpose behind the workers' compensation statute, and the specific language which is very narrow in terms of what the department has exclusive jurisdiction over.

THE COURT: What would happened to medical malpractice claims?

MR. BARLEY: It could proceed. We're not arguing that at all. That is something we've never argued. And also --

THE COURT: It's her turn. I just wanted --

MR. BARLEY: I'm sorry, your Honor.

THE COURT: No need to apologize. I asked the question.

Go ahead.

MS. COLLINS: I guess I would point out that even in a situation where there's permissive jurisdiction for

the department, that's not what they're arguing here. There's permissive jurisdiction if the department wants to investigate something. That's not what they're arguing. They're arguing subject matter jurisdiction doesn't exist because of exclusive jurisdiction, that somehow captures this claim even though it doesn't fall within the restrictive language of 440.11 -- 440.13 (11)(c) and (8). So a plain reading of the statute, although painstaking, but done methodically, I think, reveals that these arguments cobbled together, looking at different sections, and creating what appears to be a cohesive argument really have no home in the actual language of the workers' compensation statute. And we clearly have a claim that fits within the FCCPA, which this court does have jurisdiction over.

And I would add that a notice of appeal has been filed in the related case, and that order is being challenged for the same reasons that we are laying out today.

THE COURT: Brief rebuttal.

MR. BARLEY: Thank you, your Honor.

THE COURT: If you could, kind of go through the specifics, because I did have an opportunity to read a lot of the documentation that you all submitted. So I don't necessarily need you to restate a lot of what's in

here, just specific questions.

Is it indeed your position that the department has exclusive jurisdiction because that overbilling? Because that would seem to be conflicting with the question I just asked you about the medical malpractice.

MR. BARLEY: It has exclusive jurisdiction to deal with violations of the workers' comp statute and the regulations and rules under the statute. So this particular issue that they've raised is -- again, if we step back a minute, there's no private right of action under this workers' comp section they're going under. There's no common law -- we heard references to med mal and common law action. Nobody is trying to deprive anybody of a common law right that they might have. This is something that exists only because of this statute. And what the statute then goes on to say in 8 and in the regulation behind it is, okay, we've created this thing where you're not supposed to do that. If there's a claim of a violation of that, it's ours to deal with because we're regulating with how providers are working within the workers' comp system. So it's not -- it doesn't go after these common law-type issues. It goes after the rules and regulations and the statute and violations of those. This particular one was called out in particular in the regulations to say this is one that is within our

exclusive jurisdiction.

The -- this idea that there's -- the term hopping around and cobbling together was used, like patching stuff together. I completely disagree with that, with all due respective. All of it is contained very neatly in Section 440.13, which deals with providers and how providers are to function and how medical care is to be delivered in the workers' compensation system. And if you look at 3(f), which says providers are covered, it explicitly refers you to Section 11. It says they're subject to jurisdiction in Section 11. And it doesn't say they're subject to jurisdiction only under 11(a). It says they're subject to jurisdiction under Section 11. That includes 11(c), which is the exclusive jurisdiction section. And then when you look at 11(c), it explicitly refers to Section 8. Section 8 is the one that says if you violate the rules or the statute, then, you know, these are the penalties that you can be subject to.

So it's far from hopping around. The statute is very elegant in how it leads you from one section to another to show that exclusive jurisdiction over these type of issues exists with the department. As I say, that makes perfect sense because we're not talking about some common law right. We're not talking about med mal. We're not even talking about, like, if, as your Honor

pointed out, the statute didn't exist. They wouldn't even have a claim here. There's no, like, thing where Ms. Davis has been injured because she got sent a bill for getting medical care, except for the statute says in the worker's comp context she's not supposed to get it. And so, because it's purely statutory, it should be something for the department to decide how they want to handle and deal with rather than having class action lawsuits about it. And that makes perfect sense, and that's why I believe it's structured that way.

The Cliff versus Payco case that was mentioned, easily distinguishable. In that, the underlying statutory violation that's being referred to didn't say there's exclusive jurisdiction that lies elsewhere. That's what makes this unique for any other case.

Your Honor started by asking a question how this was different than the other case. It's not different. It's exactly the same situation. The only difference is it's a different provider. The letters were different, but the actual legal claims and everything are exactly the same. I got this letter. I'm subject to workers' comp. I shouldn't have gotten the letter; therefore, I'm going to file a class action lawsuit about it.

There was a statement that we believe that all -- everyone participating in the system renounces all rights

and there's no subject matter jurisdiction for the courts to decide anything if someone is even touched by a healthcare provider in the workers' compensation system. That's not true at all. What we're saying is that there's an exclusive grant of exclusive jurisdiction under the statute for interpreting and handling and dealing with issues related to alleged violations of the department's rules and of the workers' comp statute here. And, as we've seen from the regulations, the department completely agrees with that.

There was also several mentions of being sent to collection agencies and things of that nature. That's -- none of that's in the complaint. That's news to me in this motion for judgment on the pleadings. Putting that aside, that doesn't -- that isn't the issue.

The issue here is the subject matter jurisdiction, who can decide what happens to Lab Corp., who can decide what happens to Ms. Davis because of these letters, not the merits of the action. And so it's really a jurisdictional issue, not, like, trying to decide whether her claim might have merit if she proceeded in front of the department.

If I can just for one minute consult with Mr. Van Landingham to make sure I haven't missed anything.

He tells me I've talked enough. He's a wise man.

MS. COLLINS: May I just say one last thing? That is if the legislature intended for the department to have exclusive jurisdiction for any violation of the statute or its rules, this exclusive jurisdiction section would say that, it doesn't. The subsection that addresses chapter -- violations of the statute and the department's rules is part of Subsection 8. And the only part of Subsection 8 that falls inside the exclusive jurisdiction is the overutilization language. Everything else is excluded because expression of that is exclusion of everything else. It would render those words absolutely meaningless. And there's no provision anywhere in the statute that says the department has exclusive jurisdiction to deal with violations of the statute and the department's rules. The language doesn't exist.

MR. BARLEY: Can I have less than one more minute, your Honor?

THE COURT: Nope. You all are already over.

This argument that has been put forth is, of course, very interesting because it's calling for this Court to make a determination as to the subject matter jurisdiction of a cause of action that is only in existence based upon a statutory right. It would seem somewhat contradictory that a statute, the workers'

compensation statute, which, of course, is meant to be self-executing would address or create a violation and not provide a remedy for such a violation if it were not intended for that violation to be part of the self-executing statute.

The conversations or the discussions that we had with reference to other causes of action only were for the purposes of discussion, because, of course, we were talking about common law rights of action that could not be withdrawn or eliminated based upon a statutory construction. However, that being said, because the workers' compensation statute is the basis for the creation of a violation, it would not be appropriate for this Court to allow an action to proceed based upon a violation of that statute by use of allowing a plaintiff to have a private cause of action based upon another statute when that grant was not expressly provided for in the statute; therefore, the Court will grant the motion for judgment on the pleadings, as this Court does not have subject matter jurisdiction over the cause of action.

MS. COLLINS: Thank you, your Honor.

MR. VAN LANDINGHAM: We want to order the whole transcript, but maybe there's a way to get the last bit sooner?

THE COURT REPORTER: Sure.

MS. LEE: And we want a copy.

THE COURT REPORTER: Okay. Thank you.

(Which were all the proceedings had in the above-entitled cause.)

* * * * * *

C E R T I F I C A T E

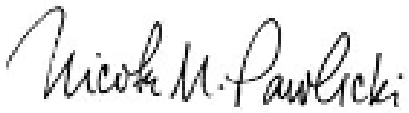
STATE OF FLORIDA
COUNTY OF HILLSBOROUGH

I, Nicole M. Pawlicki, RPR, do hereby certify that I was authorized to and did report the foregoing proceedings, and that the transcript, pages 1 through 41 is a true and correct record of my stenographic notes.

I further certify that I am not a relative, employee, attorney or counsel of any of the parties, nor relative or employee of such attorney or counsel, nor financially interested in the foregoing action.

Dated this 11th day of April, 2017.

Hillsborough County, Florida



Nicole M. Pawlicki, RPR

&

& 2:4

0

007914 1:3 3:3

1

1 29:7 32:6 42:9
11 8:25 9:9,10,12 9:13 10:9 16:21 25:7,8,16 26:2 28:14,15 34:8 36:10,11,12,13,14 36:15
110 2:4
11th 2:4 21:16 42:15
12 9:13
13 7:3,4,24,24 12:7 28:8
15 1:3 3:3 8:4
17 31:23
18 29:3
1:36 1:16

2

2 29:18
2017 1:15 42:15
22 22:25
24 11:16
250 24:17
26 30:1
26.004 30:3
26.004. 13:10
2700 2:11
28 1:15
29 21:15
2:36 1:16
2nd 2:5

3

3 8:16,21 15:12 25:4 36:9
32 22:20
33131 2:11
33602 1:17 2:5
34.001. 11:15
34.003. 12:17

4

4 12:22
41 42:9
440 12:2
440.11 34:7
440.13 12:7 23:5 25:4 26:2 34:7 36:6

6

6 12:1
600 2:10
69l 11:15 12:17 13:10 30:3

7

7 10:3 16:23 26:13 26:14

8

8 10:5,11,12,15,16 11:25 16:21,22,22 17:18 25:22 27:2,2 27:8,9,18 28:2,3,12 28:12 31:22 34:8 35:16 36:16,16 39:8,9
800 1:17

a

abide 8:11
ability 4:20 10:10 30:16
able 24:17
abrunzo 2:4
absolutely 39:12
abuses 22:23
accepting 8:21 9:5 9:22 25:4
act 5:5 21:17,19,24 30:22
acting 12:25
action 3:24,25 4:18 4:25 5:4 6:5 13:13 14:13 22:1 30:18 35:10,13 37:8,23 38:19 39:23 40:7,9 40:14,16,21 42:14
actual 19:1 23:23 25:2 34:12 37:20
add 34:16
addition 24:6
address 19:11 23:1 30:17 40:2
addressed 21:19
addresses 27:10,11 39:6
addressing 21:16 29:12
adjudicate 6:20
adjudicated 5:25 14:19
adjudication 6:4
adjustment 26:18
administrative 11:1 32:2
admitted 31:10
adopted 7:19 9:18 10:19 11:7,21
affit 24:3
agencies 18:19 38:12
agency 6:23
agent 12:25
aggrieved 13:8,11
ago 7:16
agreeing 9:2
agrees 38:10
ahead 19:22 33:23
allegation 3:23
alleged 3:20 16:13 16:14 38:7
allow 5:17 40:14
allowed 32:10
allowing 40:15
allows 23:23,24 31:5
altitude 18:3
america 1:8,9 3:2,3
amount 29:14
announce 3:4
answer 18:6
answered 21:23
answers 18:13 24:9 24:15
anybody 19:19 35:14
apologize 4:5 33:21
appeal 34:16
appearances 2:1
appearing 2:2,8
appears 18:2 25:1 29:3 34:11
applicable 15:13
application 27:18
applies 8:15
apply 15:25 16:5 16:25
appropriate 32:2 40:13
april 42:15
area 26:12
arena 5:24
argued 16:16 17:14 19:15 25:21 33:17
arguing 16:5,6,7 33:16 34:1,4,4
argument 15:7 17:3,15,18,25 18:2 18:5 25:1,21 33:2,7

33:9 34:12 39:20
arguments 7:20 14:24 15:1 16:4 34:10
article 6:19
articulated 13:16
ascertain 24:5
aside 38:15
asked 21:3 33:21 35:5
asking 37:16
aspect 28:3
assess 23:2
assistance 29:1,17 29:21
attached 13:2
attempting 19:3
attempts 22:3
attention 4:17
attorney 42:12,13
attorneys 12:18
audiovisual 14:25
authorities 11:1
authority 6:7,10
authorize 31:25
authorized 10:24 13:1 42:8
available 31:15,19
avenue 2:10
avenues 12:14
aware 3:14 13:17 26:15

b

b 8:10 10:16 11:25 16:22
back 19:6 21:1 31:9 31:22 32:9 35:10
balled 17:17
bar 31:24
barley 2:9 3:7,7,13 4:5 7:3,5 8:2,6,19 9:15 10:16 11:17 17:11 32:6,12,18 33:16,20 34:21 35:6 39:17
barred 10:23 32:8 32:13,20
barring 32:7,17
based 3:14,20 15:19 19:25 39:24 40:10,14,16
basic 5:10
basically 7:19
basis 14:13 24:13 40:12
beginning 14:4
behalf 1:5 2:2,8 3:24 12:25
believe 6:9 37:10 37:24
believes 29:20
beneficial 22:19
benefit 20:17
benefits 19:14 20:8 20:19 29:14,19
better 5:14
bill 4:21,24 16:14 16:15 18:8 23:18 28:1 37:3
billed 4:1,6 21:7 22:13,15 23:14 24:18 28:22 30:5 30:19 31:13
billing 9:20 10:7 21:12,18 30:13
bills 12:15 15:17 18:24 21:9,9,11 24:3 30:25
bit 4:3 5:12 20:13 40:24
boards 14:25
book 8:1,2,20 9:13 21:15 30:2
break 20:4
brickell 2:10
brief 34:20
briefing 15:1
briefly 20:24
bring 4:16,20 5:3 22:1 28:25
bringing 23:8
brings 3:23
broad 6:18 9:21
broader 4:10
brought 5:1 21:4,5 21:6
burden 14:21
burdensome 5:22
bureaus 18:18,20 21:8
buy 33:6

c

c 9:25 10:9 26:2 28:14 34:8 36:14 36:15 42:3,3
ca 1:3 3:3
call 16:17
called 6:13 35:24
calling 39:21
captures 34:6
care 10:24 31:25 32:1 36:7 37:4
carefully 25:17
cares 19:2
carrier 13:2 16:18 19:13 20:18 25:5 25:13 26:5,17,18 26:23 27:20,25 28:1 29:9,13,19
carveout 16:3
case 1:3 3:3 6:9,13 6:16 7:11,15,18 15:21,21,24 17:5 17:12,13 20:15 21:14,15 22:19 25:21,21 31:10 34:17 37:11,15,17
cases 15:24 20:14 20:15,19 24:11
cause 39:23 40:16 40:20 41:5
causes 40:7
certain 21:18
certify 42:7,11
challenged 34:18
chapter 8:9,22 9:18 10:19 11:6,20 12:2 12:20 17:20 27:13 29:7 31:25 39:7
chapters 28:13
chart 24:24 29:2
cheryl 1:13
choose 11:3,8
chooses 30:8
christa 2:3 3:5
circuit 1:1,1 20:21 21:3,16
circumstance 19:9 20:20 26:14
circumstances 15:20
cite 15:24
cited 6:14 20:14 25:3 30:1
claim 4:20 5:6 6:6 11:23 12:11,12 16:12 21:14,20 22:1,10 23:21,22 34:6,14 35:18 37:2 38:21
claimed 16:9
claiming 12:5 13:14,18

claims 20:17 22:2 28:22 33:3,4,9,15 37:20
class 3:23 13:13 14:12 18:23 22:21 37:8,23
clc 2:6
clear 5:20 6:14 11:22 13:21 21:10
clearly 3:20 15:13 34:14
cliff 21:15 22:5 30:23 37:11
cobbled 34:10
cobbles 17:16
cobbling 36:3
coded 24:17
cohesive 18:2 25:1 34:12
colleague 28:15
collect 5:7 8:7 19:3 21:21
collecting 4:12 12:6 21:11
collection 5:5 12:23 12:25 18:17,20 21:8 22:22 38:12
collins 2:3 3:5,5 8:3 9:13 17:8,12 18:9 18:12,14 22:12 23:6,10,13,22 24:15 31:5,16,19 32:23 33:24 39:2 40:22
come 7:11 15:21
common 19:17 20:1,5 33:8 35:12 35:13,14,22 36:24 40:9
comp 3:17 5:24 6:23 16:20 23:9 24:14 35:7,11,21 37:5,22 38:8
compelling 12:13
compensation 3:21 4:8,10,13,19,20 5:8 5:13,19 6:15,21 8:14 9:7 13:22 14:5 14:19 15:5,9 19:8 19:11,16,18 20:9 20:16,23,25 21:5 21:13 22:7,10 23:5 23:11,15,19 24:23 28:20 29:11,14,24 30:21 33:2,5,9,11 34:13 36:8 38:3 40:1,12
complaint 3:19,20 3:23 13:2,6,12,13 29:1 38:13
complete 7:2 33:7
completely 17:24 19:23 36:4 38:10
compliance 10:8
comply 9:2
complying 9:17
comprehensive 5:18
compromises 5:16
concerning 10:2,4 10:11 26:4 27:1
conclusion 28:9
conduct 23:25 27:25
confirms 28:19 30:3
conflicting 35:4
confusion 28:9
connection 4:2,7
consenting 25:6 26:1
consents 8:23
consider 20:22
consistency 14:9
consistent 14:8 29:25,25
consists 5:15
construction 27:5 27:17 40:11
construed 29:7
consult 38:23
consumer 5:5
contact 29:21
contained 15:3 32:23 36:5
contention 28:24
context 19:5 37:5
contradictory 39:25
control 26:21
conversations 40:6
copies 12:23
copy 9:13 41:2
corp 4:1,6 8:16 24:10 38:17
corporation 1:8,9 3:2,2 22:2
correct 42:10
counsel 7:15 25:3 29:5 30:1 31:10 32:16 42:12,13
county 1:2 42:5,16
course 39:21 40:1,8
court 1:1 3:1,10 4:3 4:3 6:6,13,17,21 7:13,18 8:1,5 17:4 17:10,22 18:8,11 18:13 20:21 21:2,3 21:19,23 22:10,20 23:4,7,12,21 24:10 24:14 28:11,11,21 31:3,15,18 32:4,11 32:15 33:14,19,21 34:15,20,22 39:19 39:22 40:14,18,19 41:1,3
courts 6:18,19 38:1
covered 4:13 13:1 36:9
create 40:2
created 5:23 24:24 35:17
creates 21:25
creating 34:11
creation 40:13
credit 18:19,25 21:8 24:2,2
creditor 22:24
critically 9:25
curb 22:23

d

damage 18:25 19:1
damaged 24:2
damages 22:22 23:2,24,24 24:5
date 1:15
dated 42:15
davis 1:5 3:1 12:18 13:8,14 18:15,20 23:21,22 37:3 38:18
day 42:15
de 10:24 31:25
deal 3:17 5:17 11:24 13:24 14:23 17:20 24:4 26:11 27:15 28:21 29:24 30:18 35:6,19 37:8 39:15
dealing 6:23 15:4 20:16,19 25:15 27:2 38:7

deals 16:24 36:6
dealt 6:16 14:10
debt 5:7 19:3,4 21:7,22,25 22:3,4,8 28:22 30:21 31:14
debtor 22:1,24 23:15
decide 3:16 6:7,8 6:10 10:1,3,10 11:8 26:4 37:7 38:2,17 38:17,20
deciding 15:16
decisions 9:3
declaratory 24:6
defendant 2:8 3:8 24:8 31:12
defendant's 3:10 23:25
defendants 1:10 19:15 20:14 25:3 28:24 30:12
defense 29:5 31:10
defenses 20:1
deference 6:22
defined 12:2,20 16:17 27:20
deliver 20:7
delivered 36:8
delivery 20:7
denied 10:25
deny 31:25
department 3:18 5:25 6:10 8:24 9:3 9:8,11,16,18,21,24 10:1,5,17,20 11:5,7 11:18,21,23 13:5 13:24 14:20,23 16:8 17:20 25:7,9 25:18 26:1,3,9,20 26:21 27:4,14 30:6 30:7,15 31:6,20 32:19 33:12 34:1,2 35:2 36:22 37:7 38:9,22 39:3,14
department's 25:19 28:6 31:8 38:8 39:7,16
depending 23:25
deprive 35:13
designed 19:11 24:4
determination 14:1 39:22
determine 9:17 10:12
determined 7:17
determines 10:17 11:5
difference 37:18
different 5:4 17:5 17:17,25 18:1,8,9 18:11 34:11 37:17 37:17,19,19
difficult 22:22 23:1 24:5
disagree 36:4
disagreement 26:8
disagreements 29:9
disallowed 26:17
disallows 27:21
discussion 40:8
discussions 40:6
dismiss 6:5
dismissed 7:19
dispute 6:7,8 10:3 11:11 16:17 26:19 26:20
disputed 6:17
disputes 6:20 7:10 16:23,24
dissuade 22:22
distinguishable 37:12
disturbing 24:21
divests 28:20 30:16
diving 18:3
division 12:3
documentation 12:23 34:24
doing 27:22
doubt 11:10
dovetails 27:8
drill 25:16
due 36:5
dunned 18:20

e

e 2:3 42:3,3
earlier 30:1
early 7:16
easily 37:12
east 1:17
easy 17:17
economically 5:22
education 21:17,19 21:24 30:22
effect 29:10
efficient 5:17,21 14:20
egregiousness 23:25
either 16:5 26:17
elect 27:14
elective 30:4
electively 30:6
elegant 36:20
eliminated 40:10
employee 8:8,23 19:13 20:6,18 26:24 29:1,13,15 29:17,19,20 30:9 30:22 42:12,13
employees 3:24 20:2 29:8
employer 15:15 19:12,13 20:18 29:13,18
employer's 29:8
employers 15:11 20:2,6 29:8
enforce 22:3
engage 30:7
engaged 9:19 10:18 11:6
engaging 9:20 11:19
entirely 29:25
entitled 20:20 26:10 29:20 41:5
esquire 2:3,3,9,9
essence 13:4
essentially 5:6 7:21 17:15 32:21
established 21:22
establishes 22:8
exact 24:12
exactly 12:8,11 13:2 17:21 37:18 37:20
exception 16:6
excess 10:21 27:21
excluded 39:11
excludes 22:15
exclusion 39:11
exclusive 3:17 5:9 10:1,10 11:7,18 13:4,24 15:22 17:19 20:17 25:20 25:23 26:2,3,12,25 27:3,11,18 28:13 33:13 34:5 35:3,6 36:1,14,21 37:14 38:5,5 39:4,5,9,14

excuse 16:22 28:16
executing 5:21 14:22 29:11 40:2,5
exemption 16:4
exist 5:7,8 19:21 20:6 21:22 34:5 37:1 39:16
existence 39:24
exists 5:1 17:19 35:15 36:22
expense 29:9
explain 6:9 23:23
explicit 6:11 15:25 32:24
explicitly 32:12 36:10,15
expression 39:11
expressly 40:17
extremely 19:8

f

f 2:9 8:16,21 15:12 25:4 36:9 42:3
facility 32:3
fact 19:25 25:22 27:17 28:19 30:4 30:19 31:9
failed 28:11
fails 29:19
failure 6:6
fall 34:6
falls 28:5,13 39:9
far 7:10 36:19
fashioned 17:25
fccpa 4:8 5:4 15:18 15:22 16:3,6,10 20:24 21:1,6,20,25 22:11,12,14,18,20 23:8,23 24:4,7,12 28:21 30:18 34:14
feature 29:11
fee 8:8,10
felt 13:8,11
figured 26:10
file 37:23
filed 18:21 24:9,16 34:17
financial 3:18 5:25 6:10 9:8 16:8
financially 42:14
find 25:11,11
finding 30:15
fine 11:1 32:2
first 4:18 5:12 7:24 9:15
fits 34:14
flip 30:2
floor 2:5
florida 1:2,17 2:5 2:11 3:25 5:5 6:13 22:20 42:5,16
flows 15:5
follow 8:12
following 10:23
foregoing 42:8,14
forth 8:24 9:9 13:9 25:7 39:20
found 8:16
foundational 21:23
four 7:22
framework 19:10
front 7:13 38:21
fs 12:2
full 22:25
function 36:7
functioning 15:11
fundamental 27:4 27:16
funds 31:2
further 9:1 42:11
future 10:25 32:1

g

general 6:18
generic 6:18
getting 31:24 37:4
ginned 13:13
give 32:9
gives 9:21
go 12:3 13:4,9 26:9 31:22 33:23 34:22 35:21
goals 14:18
goes 9:1 12:21 35:16,22
going 12:8 14:15 35:11 37:23
gotten 16:15 37:22
grant 38:5 40:17,18
granted 30:18
ground 7:19
guess 33:24

h

halfway 12:4
handed 8:19
handle 37:8
handling 38:6
handout 10:15
happen 6:12 33:9
happened 17:24 33:14
happens 38:17,18
harm 13:15 16:10 16:11,13
harmon 2:4
harmonwoodsla... 2:6,6
harris 22:19
health 21:24
healthcare 8:7,11 8:15,23 9:5,16,22 10:6,6,17 11:5,19 14:11 15:4,13 16:18 26:16 38:3
hear 14:24
heard 15:9,18 17:6 17:14 35:12
hearing 1:12 17:15
held 6:18
helpful 6:25
high 18:3
higher 21:17,19 30:22
hillsborough 1:2 42:5,16
hogan 2:10
hoganlovells.com 2:12,12
holdings 1:9 3:3
home 34:12
honor 3:13,14 5:14 6:3 7:25 9:14 11:16 15:3,12 17:1,9 33:20 34:21 36:25 37:16 39:18 40:22
honorable 1:13
hopping 24:25 28:8 36:2,19
horse 5:16
host 17:16
huh 24:15
hung 17:21

i

idea 4:9 8:15 14:4 16:2 36:2
identify 24:17
ignores 25:22
illegality 21:21
illegitimacy 21:21
illegitimate 21:25 28:22
illegitimately 23:14

implication 32:25
implications 30:11
implicit 32:9
important 4:15 9:4 11:4 24:8
importantly 14:18 22:15 25:8
impose 10:22 11:3 11:9 25:12
improper 9:20 10:7
improperly 24:18 30:5
incentivizing 14:11
incident 24:19
include 12:3
includes 36:14
including 10:7,20 12:23 20:15 22:2 23:16
inconsistent 18:5 19:23,24 28:14 33:10
individual 19:14 23:12 24:13
individuals 33:8
information 18:18
infrastructure 17:13
injunctive 24:7
injure 20:4
injured 3:24 8:8,22 12:6,24 16:19 18:15,17,22 19:4,6 19:12,12 20:3,11 20:18 21:7,10,12 22:13,15 23:13,16 23:17 24:11,18 26:24 28:23 29:8 30:4,9,13,16,22 31:9,13 33:1,6 37:3
injuries 4:7 5:18
injury 22:21
inside 20:9 39:9
instance 3:22
instances 18:22
insurance 4:14
intended 29:24 39:3 40:4
intention 20:7
interested 42:14
interesting 39:21
interpret 12:10 32:18,19
interpretation 14:8 31:1
interpreting 38:6
interrogatories 24:9,16
intimidated 18:24 23:18 30:25
investigate 9:16,22 10:6 25:10,11,19 27:15 30:8 31:6 34:3
involve 16:19 17:6 26:6
involved 7:13
involving 6:20
isolated 24:19
issue 3:16,18 7:8,11 13:23 16:7 20:16 20:22 21:2 24:12 24:21 26:6 27:18 35:9 38:15,16,20
issues 5:24 6:21,23 13:17,21 14:21 15:16 19:12 26:22 27:24 35:22 36:22 38:7

j

james 2:9 3:7,9
james.vanlanding... 2:12
january 7:17
judge 7:13,15 17:14,21 31:10
judgment 3:11 38:14 40:19
judicial 1:1
jurisdiction 3:15 3:17 5:10 6:3,4,20 7:9,18,23 8:24 9:8 9:11,23 10:1,5,10 10:14 11:8,19 13:5 13:24 15:16,23 16:1 17:19 20:21 21:4 25:6,9,20,23 26:1,2,3,12,25 27:3 27:9,11,14,19 28:6 28:10,14,21 30:8 30:16 31:3,5 33:13 33:25 34:2,4,5,15 35:3,6 36:1,11,12 36:13,14,21 37:14 38:1,5,16 39:4,5,9 39:15,23 40:20
jurisdictional 38:20

k

k 1:13
kaplan 15:24
kathryn 2:3 3:6
keep 32:20
kind 34:22
kl 2:6
know 8:20 9:2 13:17 14:1,5,21 16:2,11 24:9,15 30:20,24 32:14 36:17
knows 5:14 6:3 22:4

l

l 2:3
lab 4:1,6 8:16 24:10 38:17
laboratory 1:8,9 3:2,2
lack 3:15
lacks 6:6
landingham 2:9 3:7 3:9,9 7:2,4 8:18 10:15 38:24 40:23
language 11:4 25:2 27:6 28:12,18,18 30:10 33:11 34:7 34:13 39:10,16
law 5:19 19:17 20:1 20:5 29:11 33:8 35:12,13,14,22 36:24 40:9
laws 20:4
lawsuit 18:21 37:23
lawsuits 14:13 37:9
laying 34:18
leads 36:20
led 28:9
lee 2:3 3:6,6 8:4 11:16 17:9 41:2
legal 17:13 19:19 37:20
legislative 22:18
legislature 5:20 6:11 14:6,16,21 16:1 27:7 39:3
legislature's 14:1
legitimate 19:4 22:4,9 23:15 30:20 30:20

lend 33:2
letter 13:14,18 14:13 18:15 19:2 24:20 37:21,22
letters 12:24 13:3 13:23 18:17 37:19 38:18
levy 32:1
liability 15:10,14
licensing 11:1 32:3
lies 15:23 37:14
life 19:7
limit 15:10
limitation 15:14
limited 27:19
limiting 27:5 28:11 28:18
line 25:5
list 8:5
litany 31:21
little 4:3 5:12 20:13
llp 2:10
look 3:22 7:21 10:12,16 11:12,15 11:21,22,25 12:21 20:24 25:16 27:9 27:13 31:23 36:9 36:15
looking 28:17 30:23 34:10
loss 15:6
lot 14:14 34:24,25
lots 14:25
lovells 2:10

m

m 1:18 42:7,19
mail 16:15 18:16 19:2 24:20
maintaining 14:11
making 12:13
mal 35:12 36:24
malpractice 33:3,4 33:15 35:5
man 39:1
mandatory 13:9 28:25 29:6,16
march 1:15
matter 3:15 6:3,4 6:19 7:9,17,23 15:23 21:4 26:4 28:10 30:15 34:4 38:1,16 39:22 40:20
matters 6:14,17 10:2
mean 10:13 14:2
meaningless 39:13
means 12:10,11
meant 40:1
med 35:12 36:24
mediation 13:9
medical 4:1,6,25 12:21 13:1 21:9 22:13,16 33:3,4,14 35:5 36:7 37:4
members 18:23
mention 7:7
mentioned 37:11
mentions 12:4 38:11
merely 13:18 16:6
merit 38:21
merits 6:5 38:19
methodically 34:9
miami 2:11
mid 7:17
minute 5:11 35:10 38:23 39:17
misinterpretation 15:7
misinterpreted 15:2
misreading 17:22
missed 38:24
money 31:9 32:9
months 7:16
motion 3:11,14 6:5 17:14 38:14 40:18
move 17:11
multiple 18:17
mutual 19:25

n

narrow 33:12
nature 38:12
neatly 36:5
necessarily 34:25
need 11:12 13:4 33:21 34:25
negative 18:18
never 33:17
news 38:13
nicole 1:18 42:7,19
noncompliance 12:2
nope 39:19
north 2:4
notary 1:19
notebook 29:4 31:23
notes 42:10
notice 34:16
notified 11:2
notion 3:15 5:9 6:2

o

obligations 21:18
obtained 31:2
obviously 14:1
office 12:20 29:2,17 29:21
oh 26:15
okay 3:10 7:4 12:9 35:17 41:3
ombudsman 29:2 29:17
operating 20:9
opportunity 34:23
option 23:8 25:12
order 18:7 31:8 32:7 34:17 40:23
outside 29:23
overall 14:4
overbilling 35:3
overcome 24:24
overutilization 9:19 10:3,4,11,13 10:18 25:24 26:13 26:22 27:1,3,10,20 28:4 39:10
owe 30:25
owed 13:14

p

p.a. 2:4
p.m. 1:16,16
page 7:24 8:4,17,18 8:19 9:12 10:15 31:23
pages 42:9
paid 19:14 23:18 29:14 31:9,14 32:15,17
painstaking 34:9
papers 7:8,20 12:14 19:15,24
paragraph 3:22
parameters 10:21 27:22
parker 2:4
part 9:6 24:7 25:17 27:2 33:1 39:8,8 40:4

participate 14:12 14:15
participates 19:17 33:5
participating 5:23 37:25
particular 3:16 4:16 7:8 11:11,13 11:22 16:7 35:9,24 35:24
particularly 13:11 24:8
parties 42:12
passing 5:19
patching 36:3
patient 4:12,21,24 16:19
patients 4:12
pattern 10:18,20 11:20
patty 1:5 3:1
pawlicki 1:18 42:7 42:19
pay 18:23,25 24:3
payco 21:15 22:5 30:23 37:11
paying 30:25 31:24
payment 8:21 9:5 9:23 10:24,25 12:6 13:1,16 21:9,12 25:5 26:17,18 27:21 31:25 32:1,7 32:8,10,13,17,20 32:21
payments 4:12
penalties 10:23 11:2,9 25:12,14 31:11 36:18
people 8:13 9:6 18:25 19:5 20:8 24:17
perfect 36:23 37:9
permissive 25:9,17 27:8,13 28:6 30:7 31:3,5 33:25 34:2
permit 29:8
permits 15:18
permitted 17:2
person 12:17 16:19 22:2,3
perspective 9:4
petition 26:19
place 1:17 5:15 20:5
plain 34:8
plaintiff 2:2 3:5,6 3:23 5:3 7:14 14:24 15:18 17:7 23:7,12 28:25 40:15
plaintiff's 7:14 32:16
plaintiffs 1:6 15:21
pleadings 3:11 38:14 40:19
pocket 19:1 23:17
point 22:17 28:7 33:24
pointed 12:14 37:1
points 17:2
policy 14:7,16
position 23:4 35:2
possibly 19:5 31:13
power 6:7 11:11 30:14 31:8 32:23
powers 9:21 31:8 31:20,21
practice 10:18,20 10:21 11:20 18:19 19:3 27:22
practices 5:5 9:20 10:7 22:23
preceding 3:25
precisely 11:23 24:24
predicate 21:20,24 22:9
preemption 16:3,5
presumably 12:18 32:8
presume 32:19
presumed 27:6
pretty 11:2
previously 17:6 22:23 25:22
private 4:18 22:1 30:17 35:10 40:16
probably 7:16
problem 25:20
procedures 8:12
proceed 3:12 15:19 33:16 40:14
proceeded 38:21
proceedings 41:4 42:9
process 13:9 29:6 30:4
prohibited 21:11
prohibition 21:17
prohibits 4:11
prompt 20:7
promulgated 11:13
proper 6:7,9
protocols 10:22 27:22
prove 22:22
provide 8:2 22:18 22:21 29:19 40:3
provided 4:2,6 6:22 8:9 31:7 40:17
provider 8:7,11,23 9:5 10:17 11:5,19 12:24,25 16:18 18:9,11 20:12 25:4 25:6,14,25 26:6,9 26:16,18,23,24 27:22,25 30:13 31:24 32:7,25 33:6 37:19 38:3
provider's 12:2
providers 4:11 8:16 9:16,19,22 10:6,7 14:11 15:4 15:13 18:16 20:2,3 20:4 21:11 22:14 22:16 24:23 31:2 35:20 36:6,7,9
provides 22:25 23:16
providing 8:13 9:6 10:20 12:22
provision 29:16 32:24 39:13
provisions 7:22 18:4,6 19:20 24:22 27:12 30:14
public 1:19
pulling 17:25
punish 31:12
punitive 13:13
purely 37:6
purpose 20:10 22:18 33:10
purposes 19:7 40:8
pursuant 21:12
pursue 12:15
pursued 21:8
put 7:8 20:5 27:7 39:20
putting 18:1 38:14

q

question 18:13 20:21 27:1 31:18 32:16 33:22 35:4

37:16
questions 10:4,11 17:1 35:1
quickly 19:22
quite 5:15 17:17

r

r 42:3
raised 7:12,20 15:1 16:7 35:9
range 23:24
rating 18:25
rational 15:6
read 27:15,17 28:11,12,15 34:23
reading 5:10 18:4 27:5 28:19 32:23 34:8
really 8:6 19:18 21:2 25:16 34:12 38:19
reason 16:2 27:7,7
reasons 34:18
rebuttal 17:2 34:20
receive 8:8 32:10
receives 18:15
receiving 4:12 12:6
recognized 6:21
record 3:4 42:10
records 9:2
recover 31:2
redress 12:16 16:11
refer 16:22 30:6
reference 40:7
references 28:3,3,4 35:12
referred 32:5 37:13
referring 22:19 32:6
refers 12:22 36:10 36:16
reflects 18:19
reframe 21:2
regular 14:13
regulating 35:20
regulation 11:22 12:1,9 13:3,7 35:17
regulations 11:12 35:8,23,25 38:9
reimbursement 10:2 16:17,23,24 26:4,5,11,22 31:15 31:16,19 32:5
reinforces 14:18
relate 24:23
related 4:7 13:22 15:17 17:18 26:22 29:16 34:17 38:7
relates 20:3,25 25:23
relating 13:21
relationships 22:24
relative 42:11,13
relevant 22:7 25:23
relief 23:1 24:7
remedies 23:19 24:4
remedy 20:17 22:18,21 23:4,10 23:13,16 25:15 31:1,4,7,11,12 40:3
render 39:12
rendered 4:25 8:22 32:1
renounces 37:25
renunciated 20:8
renunciation 19:16 20:1,11 33:7
report 12:19 18:18 32:2 42:8
reported 21:8 24:2
reporter 4:4 41:1,3
represents 19:16
reprinted 29:3
request 29:21
requirement 28:25
requires 26:14 30:9
resolve 10:2 26:20 29:9
resolved 24:12
respect 19:13 26:24
respective 36:5
response 17:4
responsible 21:10
restate 34:25
restrictive 34:7
restruction 17:23
resulted 18:20
reveals 34:10
review 10:25
right 4:18 13:10 22:1 25:7 30:17 35:10,14 36:24 39:24
rights 19:17,21 20:1,6,9,11,12 33:8 37:25 40:9
risk 14:15
rooted 25:1
rpr 1:18 42:7,19
rule 30:1,3,10
rules 9:18 10:8,19 11:6,20 12:3 17:21 17:23 27:5,12 28:5 28:13 35:8,23 36:17 38:8 39:5,8 39:16
ruling 30:11

s

sanders 6:14 20:15
saw 30:18
saying 14:14,16 32:22 38:4
says 8:7,21 9:15,25 10:5,9,16,23 12:1,5 12:9 13:3,7 15:22 22:13 25:4 26:3 29:6,7,10,18 32:7 36:9,10,13,16 37:4 39:14
schedules 8:11
scheme 4:11 6:24 13:20 20:10
scope 5:18
second 4:23 8:6 26:12
secondly 30:24
section 7:3,4,6,24 8:16 11:14 12:7,7 15:3,12 16:21,21 16:21,22,22,23 25:7,8 27:2,8,9 28:2 29:7 32:4 35:11 36:6,10,11 36:13,15,16,16,20 39:5
sections 17:16 18:1 20:13 24:25 28:5 34:11
see 9:10 14:14,16 14:25 17:9,10,11 25:17 30:12
seeking 12:25 30:12
seen 11:17 15:20 38:9
self 5:21 14:22 29:11 40:2,5
send 18:16,17
sending 4:11,21,24 13:23 15:17

sense 13:25 14:2,17 24:1 36:23 37:9
sent 12:24 21:7 37:3 38:11
sentence 8:7
separate 16:10,11 16:13 30:17
series 5:16
services 3:18 4:1,6 4:25 6:1,11 8:13 9:6,8 12:21 13:1,15 16:8 28:1
set 8:24 9:9 13:9 25:7 26:2
seven 24:10
short 18:7
show 17:22 36:21
showed 15:12
shown 15:3
shows 8:10
signature 42:18
significant 30:2
similar 21:14
similarly 1:5
simple 19:2
simply 8:21 15:24 33:10
situated 1:5
situation 16:25 18:14,16 20:19 21:16 22:6 23:1,20 25:15 26:7,8 29:22 33:25 37:18
situations 24:5
skip 19:22
slow 4:3
solely 3:20
somewhat 39:25
sooner 40:25
sorry 33:20
sort 16:9
specific 6:24 28:18 33:11 35:1
specifically 12:4,22 13:22 26:5 27:19
specifics 34:23
squarely 21:19
standpoint 14:7,16
start 3:19 5:12 17:4 19:10
started 37:16
state 3:24 6:6 7:11 8:9 42:5
statement 15:25 19:23 37:24
statue 5:10
statute 3:21 4:10 4:16,19,21,22,23 5:1,2,4,5,8 6:12 7:1 7:21 11:17,25 12:4 12:10,11 13:19,22 14:5,8 15:2,5,8,10 15:19,22 16:12,20 18:4,6 19:8,11,16 19:18 20:23,25 21:5,9,13,23 22:7 22:11,25 23:7,9,11 23:15,19 24:19,23 25:2 27:6 28:5,20 29:2,6 30:6 31:1 32:24 33:11 34:8 34:13 35:7,8,15,16 35:23 36:17,19 37:1,4 38:6,8 39:4 39:7,14,15,25 40:1 40:5,12,15,17,18
statutes 4:8 17:17 17:18,25 18:1,5 28:17
statutory 4:10 6:24 7:6 11:13 13:20 17:23 20:10 23:24 27:5,16 30:14 37:6 37:13 39:24 40:10
stenographic 42:10
step 35:10
steve.barley 2:12
steven 2:9 3:7
stiff 11:2
street 1:17 2:4
stressful 19:8
structure 14:17
structured 14:2 37:10
students 21:18
stuff 36:4
subject 3:15 6:2,4 6:19 7:9,17,23 9:7 9:23 10:13 11:11 14:12 19:20 21:3 28:10 30:15 34:4 36:11,12,13,18 37:21 38:1,16 39:22 40:20
submit 12:19 13:6
submitted 34:24
submitting 9:2
subsection 8:24 9:9 9:10,12,15,25 10:3 10:4,9,11,12 12:1 12:22 15:12 17:18 25:22 26:13,14 27:2,18 29:17 31:21,22 32:6 39:6 39:8,9
subsections 17:16 28:8
subsume 30:14
sued 24:10
suggestion 29:5
suit 21:4,5
suite 2:11
supplants 20:23
supportive 12:23
supposed 5:18,25 6:12,15,22 8:11,12 11:24 15:10 16:10 35:18 37:5
supposedly 4:21
supreme 6:13,16 6:21 22:20
sure 5:14 14:7,10 17:1,8 38:24 41:1
system 4:14 5:13 5:14,17,20,23 6:15 6:16 7:18 8:14 9:7 14:12,19 19:19,20 19:25 20:5 33:2 35:21 36:8 37:25 38:3
systemic 18:19 19:3 24:1,21

t

t 42:3,3
tab 11:16 21:15 22:20,25 29:3 30:1 31:23
taken 1:15,18
takes 28:17
talk 9:1
talked 14:3 39:1
talking 5:12 7:6 15:14,15 36:23,24 36:25 40:9
tampa 1:17 2:5
tell 7:10 17:5
telling 28:15
tells 39:1
ten 3:22 31:23
term 11:24 12:19 36:2

terms 6:19 14:9 17:12 26:10 28:1 33:12
test 26:17
thank 3:13 34:21 40:22 41:3
theirs 31:14
theory 17:13 19:19 19:24
thing 4:23 9:4 16:16 27:10 30:2 35:17 37:2 39:2
things 4:15 8:12 9:21 10:7 14:25 25:13,14 38:12
think 4:15 6:25 7:15,16,22 13:25 14:3,6 31:21 34:9
thirteenth 1:1
thomas 1:13
threatened 18:24
threatens 22:3
three 8:18,19
time 1:16 5:15 29:18
times 24:11
title 30:3
today 34:19
tolerated 22:23
top 25:5
touched 38:2
touches 19:19
touching 33:1
trading 5:16
transaction 33:6
transcript 40:24 42:9
treated 15:4
treatment 8:22 10:21,22 27:21,23
triangle 29:12,23
true 15:20 38:4 42:10
trumps 15:22
try 5:3
trying 5:6 19:6 21:21 35:13 38:20
turn 6:2 9:10 17:8 24:22 33:19
twice 18:21
twiggs 1:17
two 3:25 4:15 7:16 12:14 25:8
twofold 30:12
type 13:3 35:22 36:22
types 25:8

u

uh 24:15
umbrella 15:11
underlying 37:12
underneath 11:13
understand 6:25 15:7 17:24
understandably 28:9
undue 29:9
unfairly 5:7
unique 37:15
unlawfully 4:1,5 31:2
use 40:15

v

v 6:19
van 2:9 3:7,9,9 7:2 7:4 8:18 10:15 38:24 40:23
variety 6:17 22:25 25:13
vast 6:17
versus 3:1 21:15 22:5,19 30:23 37:11
view 3:16 11:4
views 11:23
violate 36:17
violated 12:5,12 13:19 20:12
violates 17:23
violating 11:20 27:4
violation 3:21 4:7 4:22 10:19 11:6,24 11:25 12:1,7,10,11 12:19 13:6 15:19 16:12 17:20 22:11 23:3 28:13 30:5 35:19 37:13 39:4 40:2,3,4,13,15
violations 13:21 14:9 27:12 28:4 35:7,23 38:7 39:7 39:15
vs 1:7

w

walk 5:11 6:24 7:22 25:25
want 7:7 13:5 14:6 14:7,10 22:17 25:10 26:19 31:6 37:7 40:23 41:2
wanted 5:20,21,22 33:19
wants 25:18 34:2
way 5:9 14:2,17 15:6 32:19 37:10 40:24
we've 7:20 11:17 13:12 15:2,9 33:17 35:17 38:9
weaving 24:25
went 13:20 14:14
whatsoever 31:12
wholly 5:4
wise 39:1
withdrawn 40:10
withstand 18:3
wolf 7:13,15 17:14 17:21 31:10
woods 2:4
words 39:12
work 4:7 19:6
worker 12:6,24 18:15 19:4 21:7,10 23:14,16,17 24:18 28:23 30:5,13,16 31:9,13 33:1,6
worker's 37:5
workers 3:17,21 4:8,10,13,19,20 5:8 5:13,19,24 6:15,20 6:23 8:13 9:6 13:22 14:4,18 15:5,9 16:20 18:17,22 19:7,11,15,18 20:3 20:9,11,16,23,25 21:5,12,13 22:7,10 22:13,15 23:5,9,10 23:14,19 24:11,14 24:23 28:20 29:11 29:13,24 30:21,24 30:24 33:1,5,9,11 34:13 35:7,11,21 36:8 37:21 38:3,8 39:25 40:12
working 35:20
workplace 5:17
wrong 4:24 16:20 23:2 30:17

y
years 3:25 **yesterday** 24:10

CLERK OF THE CIRCUIT COURT
PO BOX 3360
TAMPA, FLORIDA 33601-3360
813-276-8100

APPEAL NO: **17-1790**

CERTIFICATE OF CLERK

STATE OF FLORIDA
COUNTY OF HILLSBOROUGH

I, PAT FRANK, CLERK OF THE CIRCUIT COURT FOR THE COUNTY OF HILLSBOROUGH, STATE OF FLORIDA, DO HEREBY CERTIFY THAT THE FOREGOING PAGES **1** TO **310** CONTAIN A CORRECT COPY OF THE JUDGMENT IN THE CASE OF

PATTY DAVIS
APPELLANT
VS

LABORATORY CORPORATION OF AMERICA; LABORATORY CORPORATION OF AMERICA HOLDINGS
APPELLEE

CASE NO: **15-CA-007914** AND A TRUE AND CORRECT RECITAL AND INCLUSION OF ALL SUCH ORIGINAL PAPERS AND PROCEEDINGS IN SAID CAUSE AS IT APPEARS FROM THE RECORDS AND FILES OF MY OFFICE THAT HAVE BEEN DIRECTED TO BE INCLUDED IN SAID RECORD BY THE DIRECTIONS FURNISHED ME.

IN WITNESS WHEREOF, I HAVE HEREUNTO SET MY HAND AND AFFIXED THE SEAL OF SAID COURT ON THIS THE 16TH DAY OF JUNE, 2017.

Wanda Pesquera
AS DEPUTY CLERK