IN THE SUPREME COURT OF FLORIDA

Case No.: SC20-1399

WILLIAM BOYLE,

Petitioner,

L.T. Case Nos.: 2D18-2932
11-2016-CA-002308-0001-XX

v.

MYLES RUBIN SAMOTIN, M.D., and MYLES RUBIN SAMOTIN, M.D., P.A. d/b/a SAMOTIN ORTHOPAEDICS,

Respondents.
_____/

On Discretionary Review from the District Court of Appeal
Second District of Florida

INITIAL BRIEF OF PETITIONER

J. Scott Murphy, Esq.
Florida Bar No.: 0373001
scott@pkblawfirm.com
Landis V. Curry III, Esq.
Florida Bar No.: 0469246
lance@pkblawfirm.com

PAUL KNOPF BIGGER
840 South Denning Drive, Suite 200
Winter Park, FL 32789
Phone: 407-622-2111
Fax: 407-622-2112
Secondary email:
leslie@pkblawfirm.com
Secondary email:
vielka@pkblawfirm.com

Attorneys for Petitioner

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

Rules

Treatises

STATEMENT OF THE CASE AND FACTS

Section 766.106(4) of the Florida Statutes (2018) provides in part: "The notice of intent to initiate litigation *shall be served* within the time limits set forth in s. 95.11." (Emphasis added.) The certified conflict issue is whether, under this statute, a medical malpractice claimant seeking to satisfy the limitations periods must only timely serve (by certified mail, return receipt requested) the notice of intent, or must the claimant also ensure that the prospective defendant actually receives the mailed notice and signs the return receipt before the limitations period expires.

In the decision below, the Second District held that it was "constrained by the doctrine of stare decisis to apply" its prior decision in *Bove v. Naples HMA, LLC*, 196 So. 3d 411, 414-15 (Fla. 2d DCA 2016), where the court held that a medical malpractice plaintiff must "ensure the prospective defendant receives the notice of intent prior to the expiration of the limitations period under section 95.11(4)(b) in order to trigger the tolling of the statute of limitations under section 766.106(4), Florida Statutes (2018)." (R. 146.) The Second District certified conflict with *Zacker v. Croft*, 609 So. 2d 140 (Fla. 4th DCA 1992), and *Baxter v. Northrup*, 128 So. 3d 908 (Fla. 5th

DCA 2013), where the courts held that tolling is triggered by proper service of the presuit notice and not by a prospective defendant's actual receipt of the notice. (R. 153-54, 156.)

The facts pertinent to the certified conflict issue are not in dispute and are set forth in the Second District's decision. "[T]he parties agree the four-year statute of repose for Petitioner's medical negligence claim expired on May 7, 2016—four years after [Petitioner's] initial foot surgery." (R. 146.) On April 20, 2016, Petitioner "purchased a ninety-day extension of the statute of limitations period by filing a petition for an automatic extension pursuant to section 766.104(2)." (*Id.*) Thus, Petitioner "had until August 5, 2016, to file his medical negligence claim against [Respondents]." (*Id.*) On August 4, 2016, Petitioner served a notice of intent to initiate litigation, via certified mail, returned receipt requested, addressed to Respondents. (R. 146-47.) Respondents signed the return receipt on August 8, 2016. (*Id.*) Respondents later rejected the claim, and Petitioner filed suit. (R. 147.)

Respondents moved for summary judgment, arguing that Petitioner failed to timely file his lawsuit. (*Id.*) Based on *Bove*, the trial courted granted the motion. (*Id.*) But the trial court noted its

"disagreement with *Bove*" and identified opinions from other district courts of appeal that "it believed were correctly decided." (*Id.*)

The Second District affirmed "based on *Bove*." (R. 146.) The court stated that "while [Petitioner] placed the notice of intent in the mail and properly served it in the prescribed manner under section 766.106(4), via certified mail, return receipt requested, within the time limits under the four-year statute of repose," Respondents "did not sign the return receipt for the notice of intent until *after* the limitations period expired." (R. 152.) The court concluded that "[b]ecause the facts presented in the instant case are indistinguishable from those in *Bove*, we are constrained by the doctrine of stare decisis to apply *Bove*." (R. 156.)

The court recognized that "other district courts have resolved the same issue and arrived at the opposite conclusion—that the statute of limitations period is tolled upon *mailing* of the notice of intent—based upon identical facts as presented here, where the plaintiff serves the notice of intent prior to the expiration of the applicable time limitations but the notice of intent is not received until after the time limitations period has lapsed." (R. 152-53.) The court then discussed the Fourth District's decision in *Zacker* and the

Fifth District's decision in *Baxter*, both of which held that tolling begins when the notice is served and not when it is received. (R. 153-54.)

The Second District also noted that in *Bay County Board of County Commissioners v. Seeley*, 217 So. 3d 228 (Fla. 1st DCA 2017), Judge Makar expressed his disagreement with *Bove*. (R. 154-55.) In his concurring opinion, Judge Makar found the *Baxter* court's analysis more persuasive, reasoning:

> As our supreme court explained long ago:
>
> > Service of the presuit notice by certified mail, return receipt requested, simply assures reliable verification of 1) timely service and 2) the date of receipt. Verification of timely service serves to reduce contention and litigation concerning compliance with the general notice requirement. . . . Likewise, verification of the date of receipt serves to reduce disputes concerning compliance with various time periods that begin to run after presuit notice is received.
>
> *Patry v. Capps*, 633 So. 2d 9, 12 (Fla. 1994) (citation omitted); *see also Hillsborough Cty. Hosp. Auth. v. Coffaro*, 829 So. 2d 862, 866 (Fla. 2002) (holding that the date a defendant receives a notice of intent starts the tolling of the limitations period (citing *Boyd v. Becker*, 627 So. 2d 481, 483-84 (Fla. 1993) (limitations period tolled when

> defendant receives notice of intent, rather than time it was mailed)).

(R. 155 (quoting *Seeley*, 217 So. 3d at 229 (Makar, J., concurring) (omission in original)).) Further, "Judge Makar stated 'our supreme court has repeatedly said the presuit statute, even with its contradictions, must be interpreted in a way that allows plaintiffs access to courts and allows defendants sufficient time upon receipt of a notice of intent to evaluate it.'" (*Id.* (quoting *Seeley*, 217 So. 3d at 229 (Makar, J., concurring).)

The Second District did not challenge the reasoning of *Zacker*, *Baxter*, or Judge Makar's concurring opinion in *Seeley*. It instead "decline[d] to recede from *Bove*," citing decisions requiring it to follow its own precedent. (R. 156.) It also "certif[ied] conflict with *Zacker* and *Baxter*." (*Id.*)

In a lengthy separate opinion, Judge Andrea Teves Smith concurred "in result but only because we are bound by our prior precedent in *Bove*." (R. 157.) She explained her disagreement "with *Bove*'s construction of section 766.106(4) and [Florida Rule of Civil Procedure] 1.650—that the prospective defendant must receive, or in essence sign for, the notice of intent within the time limits of section

95.11(4)(b) in order to trigger tolling of the limitations period under section 766.106(4)." (R. 157.) Based on the "clear and unambiguous language of section 766.106(3)(a)," Judge Smith agreed "with *Zacker, Baxter*, and Judge Makar's concurring opinion in *Seeley* that the time limits of section 95.11(4)(b) are tolled upon service of the notice of intent—when the notice of intent is mailed . . . ." (R. 157.)

Judge Smith then detailed the reasons why *Bove* was wrongly decided. (R. 157-70.) Being "guided by the well-established principles of statutory interpretation together with legislative intent of chapter 766 and the supreme court's repeated directive that these statutes be construed in a manner that favors access to the courts," Judge Smith stated that she "would hold that the plain and clear language of section 766.106(4) and rule 1.650(d)(1) require only that *service* of the notice of intent be accomplished before the expiration of the statute of limitations or repose in order to toll time limits under 95.11(4)(b)." (R. 170.)

Judge Smith recognized that imposing the additional requirement of "receipt" essentially required the court to "improperly rewrite section 766.106(3) and (4), as well as rule 1.650 . . . ." (R. 160-61.) She stated that while the legislature and this Court could

have written the statute and rule that way, neither did. (R. 161.) "[T]here is simply no language in the statute or rule placing the onus on the plaintiff to ensure that the prospective defendant accepts and signs the return receipt for the notice of intent within the time limits of section 95.11(4)(b)." (R. 161.)

Judge Smith concluded that obligating a plaintiff "to ensure a defendant's receipt of the notice of intent prior to the expiration of the limitations period" would "significantly reduce a plaintiff's statute of limitations period." (R. 166.) That, in turn, would "further restrict a party's constitutional right of access to courts by placing yet another obligation on the plaintiff before being permitted to file suit—to ensure that a prospective defendant receives, and signs for, the notice of intent within the time limits of section 95.11(4)(b)." (R. 167.) That obligation, she stated, "is an impossible duty well beyond any plaintiff's control." (*Id.*)

Recognizing that chapter 766 of the Florida Statutes "already restricts a plaintiff's access to the courts," Judge Smith referenced this Court's holdings that the medical negligence statutes are to be interpreted liberally in a manner that favors access to courts. (R. 167-68.) Accordingly, "guided by the well-established principles of

statutory interpretation together with the legislative intent of chapter 766 and the supreme court's repeated directive that these statutes be construed in a manner that favors access to the courts," Judge Smith concluded that she "would hold that the plain and clear language of section 766.106(4) and rule 1.650(d)(1) require only that *service* of the notice of intent be accomplished before the expiration of the statute of limitations or repose in order to toll time limits under 95.11(4)(b)." (R. 170.) She also concluded that Petitioner's lawsuit "was timely filed" and that "he should be entitled to proceed on the merits of his claim." (*Id.*)

After the Second District issued its decision, Petitioner moved for rehearing en banc. (R. 171.) The court denied that motion, and Petitioner then timely invoked this Court's discretionary jurisdiction based on the certified conflict. (R. 202, 204.) This court accepted jurisdiction. (R. 240.)

SUMMARY OF ARGUMENT

This Court should quash the decision below, disapprove *Bove*, and approve *Zacker* and *Baxter*. The plain text of section 766.106(4) and rule 1.650(d)(1) are clear that timely service of the notice of intent, not timely receipt, tolls the limitations periods. Service by mail is complete upon mailing. Petitioner timely served his notice of intent by mailing it before the limitations period expired, and his action is therefore not time barred.

The decision below was based solely on *Bove*, which was wrongly decided. As Judge Smith correctly explained in her specially concurring opinion, *Bove* imposed a requirement that is not in the text of pertinent parts of the statute and rule. *Bove* erroneously focused on another part of rule 1.650 that does not address service of a notice of intent or its tolling effect. And it did not mention *Zacker* or *Baxter*, which correctly held that timely service, not timely receipt, tolls the limitations periods.

The Second District's decisions improperly rewrite the text of both the statute and the rule, creating an impossible duty for claimants that unduly restricts their constitutionally guaranteed right to access the courts.

ARGUMENT

I. Under section 766.106(4) and rule 1.650(d)(1), timely service of the notice of intent to initiate litigation, not timely receipt of the notice, tolls the limitations periods.

Chapter 766 of the Florida Statutes "sets out a complex presuit investigation procedure that both the claimant and defendant must follow before a medical negligence claim may be brought in court." *Kukral v. Mekras*, 679 So. 2d 278, 281 (Fla. 1996). Part of the procedure requires the claimant, as a condition precedent to filing suit, to notify each prospective defendant "by certified mail, return receipt requested, of intent to initiate litigation for medical negligence." § 766.106(2)(a), Fla. Stat. By serving the notice of intent to initiate litigation within the time limits set forth in section 95.11, Florida Statutes, the claimant tolls the limitations periods as to all potential defendants.[1] § 706.106(4), Fla. Stat.

The issue here is whether the claimant, in addition to timely mailing the notice of intent to initiate litigation, must also ensure that the prospective defendant actually receives the notice and signs the

[1] The claimant can also purchase "an automatic 90-day extension" of the limitations periods to allow the presuit investigation. § 766.104(2), Fla. Stat. (2018).

return receipt before the limitations periods expire. Based on the plain text of the pertinent statute and rule, the answer is no. The statute and rule require timely service of the notice, but they do not require timely receipt.

Section 766.106(4), which is titled "SERVICE OF PRESUIT NOTICE AND TOLLING," provides in pertinent part: "The notice of intent to initiate litigation *shall be served* within the time limits set forth in s. 95.11." (Emphasis added.) Rule 1.650, which applies to the procedures prescribed by section 766.106, provides likewise. Under the heading "Time Requirements," rule 1.650(d)(1) provides:

> The notice of intent to initiate litigation *shall be served* by certified mail, return receipt requested, prior to the expiration of any applicable statute of limitations or statute of repose. If an extension has been granted under section 766.104(2), Florida Statutes, or by agreement of the parties, the notice *shall be served* within the extended period.

(Emphasis added.)

When this statute and rule were adopted in 1988,[2] the Florida Rules of Civil Procedure made clear that service by mail was complete

[2] Under the fixed-meaning canon, "[w]ords must be given the meaning they had when the text was adopted." Antonin Scalia and Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts* § 7, at 78 (2012).

upon mailing. At that time, Florida Rule of Civil Procedure 1.080(b) stated that "[s]ervice by mail is deemed complete upon mailing." The same is true today—service by mail is "complete upon mailing." Fla. R. Jud. Admin. 2.516(b)(2).[3]

Thus, timely mailing the notice of intent constitutes service, which then tolls the limitations periods while the prospective defendants investigate the alleged acts of negligence. This Court has recognized this to be true. In *Patry v. Capps*, 633 So. 2d 9, 11 n.4 (Fla. 1994), this Court noted that "the statute is tolled as of the date the notice of intent is mailed . . . ." This Court also stated: "It appears that notice of intent to initiate litigation sent certified mail, return receipt requested, would be sufficient to toll the statute of limitations, even if the notice was not actually received by the defendant." *Id.* at 12 (citing *Zacker v. Croft*, 609 So. 2d 140 (Fla. 4th DCA 1992), *review denied*, 620 So. 2d 760 (Fla. 1993)). Those statements are directly supported by the plain text of the statute and rule set out above.

[3] As Judge Smith recognized in her specially concurring opinion, several Florida appellate courts have also found that service by mail is complete upon mailing. (R. 164-65 (collecting cases).)

The court below reached a different result because it was "constrained by the doctrine of stare decisis to apply" *Bove v. Naples HMA, LLC*, 196 So. 3d 411 (Fla. 2d DCA 2016). (R. 156.) But as Judge Smith explained in her specially concurring opinion, *Bove* was wrongly decided. (R. 157-62.)

In *Bove*, the Second District improperly rewrote section 766.106(4) to require that the notice not only be served, but that it also be *received by* any prospective defendant within the time limits set forth in section 95.11. 196 So. 3d at 414-15. Although the *Bove* court acknowledged that the statute "does not refer to notice of intent being received," it nevertheless imposed that requirement. *Id.* at 415 n.6.

Judge Smith recognized that "[i]mposing the additional requirement of 'receipt' as we did in *Bove* requires us to improperly rewrite" the statute and the rule. (R. 160.) She concluded that "there is simply no language in the statute or the rule placing the onus of the plaintiff to ensure that the prospective defendant accepts and signs the return receipt for the notice of intent within the time limits of section 95.11(4)(b)." (R. 161.)

The *Bove* court improperly focused on another part of rule 1.650 (subpart (b)(1)), which addresses when prospective defendants are deemed to have received notice of the claimant's notice of intent to initiate litigation. Rule 1.650(b)(1) provides: "Notice of intent to initiate litigation sent by certified mail to and received by any prospective defendant *shall operate as notice* to the person and any other prospective defendant who bears a legal relationship to the prospective defendant receiving notice." (Emphasis added.) Despite the fact that rule 1.650(b)(1) does not specifically address service of a notice of intent or its tolling effect, the *Bove* court relied on that part of the rule to erroneously require receipt of the notice to toll the limitations periods. *Bove*, 196 So. 3d at 414-15.

In his concurring opinion in *Bay County Board of County Commissioners v. Seeley*, 217 So. 3d 228, 229 (Fla. 1st DCA 2017), Judge Makar criticized the *Bove* court's reading of rule 1.650. He stated that the court's reading "overlooks a harmonizing view of the rule's language," whereby it is "more reasonable to conclude that sending the notice via certified mail satisfies the requirement of 'service' for statute of limitations purposes, and that the requirement of a return receipt provides a date certain for computing the length

of a tolling provision." *Id.* (Makar, J., concurring).

That reading, he said, is in keeping with this Court's statements in *Patry* about the purposes of verifying both timely service of the presuit notice and the date of receipt. *Id.* (Makar, J., concurring). "Verification of timely service serves to reduce contention and litigation concerning compliance with the general notice requirement," while "verification of the date of receipt serves to reduce disputes concerning compliance with the various time periods that begin to run after presuit notice is received." *Id.* (Makar, J., concurring) (quoting *Patry*, 633 So. 2d at 12).

The *Bove* court was apparently concerned about potentially shortening the ninety-day investigation period afforded to defendants in medical malpractice actions. 196 So. 3d at 415 n.6. But that concern was misplaced. This Court has already made clear that a defendant's ninety-day presuit investigation period runs from the date the notice was received. *See Boyd v. Becker*, 627 So. 2d 481, 484 (Fla. 1993). By construing the statute in that manner, this Court ensured that each defendant would have "a full ninety days in which to evaluate a plaintiff's claim." *Id.*

The fact that each defendant's ninety-day evaluation period is

triggered by receipt of the notice of intent does not affect the claimant's ability to toll the limitation periods by timely *serving* the notice under section 766.106(4) and rule 1.650(d)(1). As Judge Makar stated in *Seeley*: "The timely service of a notice of intent satisfies the requirement of general notice, while a defendant's receipt of the notice ensures that the full ninety days of tolling is available thereafter so that defendants may evaluate plaintiffs' claims." *Seeley*, 217 So. 3d at 229 (Makar, J., concurring).

That conclusion is supported by this Court's decision in *Patry*, 633 So. 2d at 11. The issue there was whether service of the notice of intent by hand delivery rather than by certified mail was sufficient. *Id.* at 9. During its detailed review of the medical malpractice statutory scheme, this Court recognized that it is the date of mailing that controls for purposes of the statute of limitations: "Although *the statute is tolled as of the date the notice of intent is mailed,* the tolling period is measured from the date the notice is received by the prospective defendant." *Id.* at 11 n.4 (emphasis added). The *Bove* court erroneously conflated those concepts, which resulted in an additional "receipt" requirement for tolling that is not in the text of the statute or the rule.

II. The Fourth and Fifth Districts correctly decided that timely service, not timely receipt, tolls the limitations periods.

The courts in *Zacker v. Croft*, 609 So. 2d 140 (Fla. 4th DCA 1992), and *Baxter v. Northrup,* 128 So. 3d 908 (Fla. 5th DCA 2013), correctly decided this issue.

In *Zacker*, a medical malpractice claimant sent a notice of intent to the prospective defendants before the expiration of the statute of limitations. 609 So. 2d at 141. But because the defendant had recently moved into a different suite, the notice of intent was returned undelivered to the claimant. *Id.* Although the claimant mailed a second notice of intent that was received by the defendants at their new address, the second notice was received after the statute of limitations had run. *Id.* The trial court ruled that the claimant's action was time barred. *Id.*

The Fourth District reversed, stating that it disagreed with the trial court's decision that it was "incumbent upon plaintiffs" to see that the defendants received the notice of intent within the limitation period. *Id.* at 141. The court stated that the "purpose of the notice requirement is to notify the prospective defendants of the medical malpractice claims, to promote the settlement of such claims, when

appropriate, and not to function as a trap for medical malpractice claimants." *Id.* 141-42. Thus, the timely mailing of the initial notice of intent was effective to toll the statute of limitations even though the defendants did not receive notice until after the limitations period expired. *Id.* at 142.

In *Baxter,* the Fifth District held that the "tolling period commences when the notice is served in accordance with Florida Rule of Civil Procedure 1.650(d)(1)." 128 So. 3d at 912. The notice of intent in that case was mailed before the expiration of the statute of limitations, but was not received until two days after the statute expired. The defendant argued that, under *Boyd v. Becker,* 627 So. 2d 481 (Fla. 1993), the statute was not tolled until the notice was received. *Baxter*, 128 So. 3d at 912.

The Fifth District rejected that argument, finding that mailing the notice of intent was sufficient to toll the statute of limitations under rule 1.650(d)(1). *Id.* The court concluded that *Boyd* "only addresses the commencement of the period within which suit *must be filed* following the service of the notice." *Id.* (emphasis added). The court stated that "*Boyd* resolved a rule conflict and effected a *sua sponte* amendment to rule 1.650(d)(3), to provide that suit must be

filed within a certain period after the notice is 'received.'" *Id.* The court found it significant that "[n]o change was made to Rule 1.650(d)(1), which specifically states that service of the notice of intent by certified mail must be accomplished before the expiration of the statute of limitations." *Id.*

These decisions properly followed the plain text of section 766.106(4) and rule 1.650(d)(1). They also comported with Florida's long-held policy "that the medical malpractice statutory scheme must be interpreted liberally so as not to unduly restrict a Florida citizen's constitutionally-guaranteed access to the courts . . ." *Kukral v. Mekras*, 679 So. 2d 278, 284 (Fla. 1996); *accord Hillsborough Cty. Hosp. Auth. v. Coffaro*, 829 So. 2d 862, 865 (Fla. 2002). Although these decisions are directly contrary to the Second District's subsequent decision in *Bove*, *Bove* did not discuss or even acknowledge them.

III. The Second District's decisions impose an impossible duty that unduly restricts Florida citizens' constitutionally guaranteed access to the courts.

Under the Second District's decisions, claimants will have to ensure that prospective defendants actually receive the mailed presuit notice and sign the return receipt prior to the expiration of

the limitations periods. Adding those requirements imposes "an impossible duty well beyond any plaintiff's control." (R. 167.)

There is an inherent unreliability of mail delivery that should not be used to bar a claimant's suit. (R. 165.) Delivery of certified mail can vary based on a number of factors, including the distance to the destination, the weather, the time of year, and the diligence of postal employees involved. Delivery can also be impacted by the unavailability of the addressee. Unscrupulous prospective defendants may even actively avoid delivery or refuse to sign the return receipt in hopes that the limitations periods will expire. When addressees are unavailable, postal employees will typically leave a note asking the addressee to pick up the certified mail at the post office, where it is held for fifteen business days.

Those unanticipated delays, which are completely out of claimants' control, could have grave consequences for claimants with meritorious medical negligence claims. Under the Second District's approach, claimants will have to mail the presuit notice well before the limitation periods expire, so that there is sufficient time to ensure that (1) the certified mail is not lost or misdelivered by the postal service, (2) the prospective defendants actually receive

the mail, and (3) the prospective defendants timely sign the return receipt. That would effectively shorten the limitations periods enacted by the legislature and further restrict Florida citizen's constitutional right of access to the courts.

The Second District's approach therefore runs counter to this Court's repeated admonishment that, whenever possible, "the presuit notice and screening statute should be construed in a manner that favors access to courts." *Patry*, 633 So. 2d at 13; *accord Kukral*, 679 So. 2d at 284. The purpose of the "presuit requirements is to alleviate the high cost of medical negligence claims through early determination and prompt resolution of claims, not to deny access to the courts to plaintiffs such as [Petitioner]." *Weinstock v. Groth*, 629 So. 2d 835, 838 (Fla. 1993).

The *Bove* court did not discuss the adverse effects of requiring receipt in addition to service. As Judge Smith rightly noted in her specially concurring opinion, the *Bove* decision "only addressed the rights of a prospective defendant," which are already fully protected by this Court's precedent. (R. 162.) "By focusing on receipt, *Bove* failed to consider a claimant's clear right to bring a medical malpractice action after complying with the presuit requirements of

chapter 766, one of which requires only that a claimant serve the notice of intent within the time limits of section 95.11(4)(b)." (R. 162.)

The text of statute and rule are clear that timely service—and service alone—tolls the limitations periods. Because service by mail is complete upon mailing, the limitations periods are "tolled as of the date the notice of intent is mailed . . . ." *Patry*, 633 So. 2d at 11 n.4.

There is no conflict in the statute or rule. But even if there were some conflict, this Court has previously made clear that such conflicts "should be resolved in a manner that allows a claim to be considered on its merits, rather than barred by a judicial construction that applies the more limiting statutory provision." *Boyd*, 627 So. 2d at 484.

CONCLUSION

Petitioner's action was timely. The plain text of section 766.106(4) and rule 1.650(d)(1) requires only that the notice of intent be served within the limitations periods. The text does not also require receipt by the prospective defendants. The Second District's decisions improperly rewrite the text, creating an impossible duty for claimants that unduly restricts their constitutionally guaranteed

right to access the courts.

This Court should therefore quash the decision below and remand for further proceedings. This Court should also disapprove the Second District's decision in *Bove* and approve the Fourth and Fifth District's respective decisions in *Zacker* and *Baxter*.

s/ Landis V. Curry III
J. Scott Murphy, Esq.
Florida Bar No.: 0373001
Landis V. Curry III, Esq.
Florida Bar No.: 0469246
PAUL KNOPF BIGGER, PLLC
840 South Denning Drive, Suite 200
Winter Park, FL 32789
Phone: 407-622-2111
Fax: 407-622-2112
Attorneys for Petitioner/Plaintiff
Primary E-Mail: scott@pkblawfirm.com
Primary E-Mail: lance@pkblawfirm.com
Secondary E-Mail: leslie@pkblawfirm.com
Secondary E-Mail:vielka@pkblawfirm.com

CERTIFICATE OF SERVICE

I certify that the foregoing document has been furnished by e-mail on January 19, 2021, to:

Kirsten K. Ullman, Esq. ULLMAN BURSA LAW 3812 Coconut Palm Drive, Suite 200 Tampa, Florida 33619 813-970-0500 (tel) 813-970-0549 (fax) kullman@ublawoffices.com courtmail@ublawoffices.com ssamhoury@ublawoffices.com Attorney for Respondents/Defendants	Andrew S. Bolin, Esq. BOLIN LAW GROUP 1905 E. 7th Avenue Tampa, FL 33605 813-848-0600 (tel) 813-848-0090 (fax) asb@bolin-law.com zgj@bolin-law.com jec@bolin-law.com Attorney for Amicus Curiae, Florida Hospital Association, and Amicus Curiae, Florida Medical Association
Kansas R. Gooden, Esq. BOYD & JENERETTE, P.A. 11767 S. Dixie Hwy., #274 Miami, FL 33156 305-537-1238 (tel) Kgooden@boydjen.com Attorney for Amicus Curiae, Florida Defense Lawyers Association	

s/ Landis V. Curry III
Landis V. Curry III

CERTIFICATE OF COMPLIANCE

I certify that this document complies with the applicable font and word count limit requirements.

s/ Landis V. Curry III
Landis V. Curry III