IN THE FLORIDA SUPREME COURT OF FLORIDA

GOVERNMENT EMPLOYEES INSURANCE COMPANY, GEICO INDEMNITY COMPANY, and GEICO GENERAL INSURANCE COMPANY,

Appellants,

vs. **Case No. SC23-1540**

GLASSCO, INC., JOHN BAILEY, JASON WILEMON, and ANDREW VICTOR,

Appellees.
_____/

AUTOMOTIVE EDUCATION AND POLICY INSTITUTE'S NOTICE OF FILING PROPOSED AMICUS CURIAE BRIEF

Pursuant to Florida Rules of Appellate Procedure 9.370, the Automotive Education and Policy Institute ("**AEPI**"), hereby gives notice of filing the attached proposed amicus curiae brief and states:

1. On January 22, 2024, AEPI filed its motion seeking leave to file an amicus curia brief in support of the Appellees.

2. On January 24, 2024, the Appellants filed a response in opposition. Among other things, the Appellants contend that, "if permitted, AEPI's amicus brief would not present any new

information for this Court to consider and would instead be duplicative of Appellees' Answer Brief." The Appellants also contend that AEPI's motion "does not explain what AEPI proposes to add to the briefing that the Appellee has not already addressed, and thus, there is nothing that has been shown to demonstrate how AEPI's proposed amicus brief could assist this Court on any issue pending in this case, rather than simply being an effort to extend the briefing limitations that the rules impose on the Appellees."

3. To assist this Court in deciding whether to grant or deny AEPI's pending motion for leave to file an amicus curiae brief, AEPI's proposed amicus curiae brief is attached hereto as **"Exhibit A."**

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 25th day of January, 2025, a true and correct copy hereof was **electronically filed** with the Clerk of the Court, and was **electronically served** on:

- **Counsel for Appellants**: John P. Marino, Esquire (Email: John.Marino@rivkin.com), Lindsey R. Trowell, Esquire (Email: Lindsey.Trowell@rivkin.com), Max Gershenoff, Esquire (Email: Max.Gershenoff@rivkin.com), and Yonatan Bernstein, Esquire (Email: Yonatan.Bernstein@rivkin.com), 1301 Riverplace Boulevard, 10th Floor, Jacksonville, Florida 32207; and

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Respectfully submitted,

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AUTOMOTIVE EDUCATION AND POLICY INSTITUTE'S AMICUS CURIAE BRIEF IN SUPPORT OF APPELLEES

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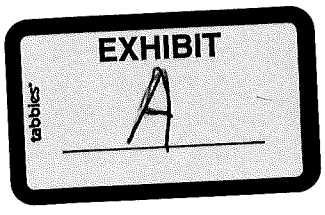

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STATEMENT OF AMICUS CURIAE'S IDENTITY AND INTEREST

The Automotive Education and Policy Institute ("**AEPI**") is a non-profit 501(c)(3) organization which provides education, information, and assistance to consumers and collision repair-related businesses concerning vehicle safety, insurance responsibilities, and consumer rights on automotive issues. AEPI's website is located at *autoepi.org*.

AEPI is committed to improving the safety of the collision repair process, and improving the relationships between repairers and insurers, as they work to serve consumers. AEPI aids insurance regulators to understand issues facing consumers by participating in the National Association of Insurance Commissioners' consumer liaison program.

In this case, this Court has accepted jurisdiction to answer two questions certified by the U.S. Eleventh Circuit Court of Appeals concerning the Florida Motor Vehicle Repair Act (the "**FMVRA**"), Chapter 559, Part IX, Florida Statutes.

AEPI is knowledgeable and uniquely positioned to advise this Court on the proper interpretation and application of the governing

law, and how this Court's decision will affect the motor vehicle repair industry and its customers.

AEPI supports the position taken by the Appellees, Glassco, Inc., John Bailey, Jason Wilemon, and Andrew Victor. The purpose of this brief is to assist this Court in resolving the certified questions in a manner that is consistent with the applicable statutes, case law, and public policy, from the perspective of consumers and the repair industry, and to explain adverse ramifications to them that will result if this Court accepts the arguments presented by the Appellants, Government Employees Insurance Company, Geico Indemnity Company, and Geico General Insurance Company, (collectively, "**Geico**").

SUMMARY OF THE ARGUMENT

Geico's request to expand the FMVRA will affect every type of vehicle repair shop in Florida and its insured customers, will jeopardize billions of dollars in previously paid transactions, and deserves cautious examination.

Since its enactment in 1980, the FMVRA has been amended by 23 session laws. However, none of those amendments (including the most recent amendments adopted in 2023) created a private

cause of action, affirmative defense, or other remedy for a customer's insurance company.

Geico is a non-injured non-customer, and it has no privity in the repair contracts between its insureds and their chosen repair shops. Nonetheless, Geico is attempting to use the FMVRA as a tool to interfere with and nullify those contracts to avoid complying with its own contractual promise to pay the "prevailing competitive price" required by its insurance policies.

Florida law already enables Geico to entirely control the cost and the manner of repairing insureds' vehicles, provided it accepts the liability for those repairs. Rather than doing so, Geico seeks to use this litigation to obtain complete control over the cost of repairs without accepting any of the associated liability.

Instead of rewriting the FMVRA and awarding Geico more relief than an injured customer could recover under the FMVRA, this Court should direct Geico to seek relief from the governmental entities charged with enforcing the FMVRA, rewrite its insurance policies, or lobby the Legislature to amend the FMVRA.

STANDARD OF REVIEW

AEPI agrees the *de novo* standard applies.

ARGUMENT

THIS COURT SHOULD REJECT GEICO'S INVITATION TO REWRITE THE FLORIDA MOTOR VEHICLE REPAIR ACT IN A MANNER THAT WILL HAVE SIGNIFICANT ADVERSE CONSEQUENCES TO FLORIDA'S REPAIR SHOPS AND THEIR CUSTOMERS

(a) The certified questions

In *Gov't Employees Ins. Co. v. Glassco, Inc.*, 85 F.4th 1136, 1147-1148 (11th Cir. 2023), the Eleventh Circuit certified the following questions:

> (1) DOES FLA. STAT. §559.921(1) GRANT AN INSURANCE COMPANY A CAUSE OF ACTION WHEN A REPAIR SHOP DOES NOT PROVIDE ANY WRITTEN REPAIR ESTIMATE?
>
> (2) DO THE VIOLATIONS HERE UNDER THE [FLORIDA MOTOR VEHICLE] REPAIR ACT VOID A REPAIR INVOICE FOR COMPLETED WINDSHIELD REPAIRS AND PRECLUDE A REPAIR SHOP FROM BEING PAID ANY OF ITS INVOICED AMOUNTS BY AN INSURANCE COMPANY?

Both questions should be answered in the negative. Any other result will have far-reaching adverse consequences to vehicle repair shops and their customers.

(b) The certified questions implicate all types of vehicle repair shops and their customers

Although Geico's lawsuit targets a single windshield shop, the

FMVRA applies, with limited exceptions,[1] "to all motor vehicle repair shops in Florida." §559.902, Fla. Stat. Consequently, the outcome of this appeal will not merely govern Geico and one windshield shop. It will govern all auto insurance companies doing business in Florida, and all collision repair shops, dealership service departments, mechanic shops, tire shops, and other businesses that repair vehicles damaged in accidents throughout Florida, and all of their customers.

This Court's decision will not only have *prospective* effect on an insurance company's ability to seek recoupment of payments previously made to every type of vehicle repair shop but could also *retroactively* implicate repairs performed during the four-year statute of limitations period that precedes the filing date of an insurance company's lawsuit. *See,* §95.11(3)(e), Fla. Stat. (imposing

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[1] As explained in Section 559.902(1)-(5), the FMVRA does not apply to: (1) vehicle repair shops of a municipal, county, state, or federal government; (2) any person who engages solely in the repair of their own vehicles or "for-hire" vehicles which are rented for periods of 30 days or less; (3) any person who repairs only vehicles which are operated principally for agricultural or horticultural purposes; (4) licensed motor vehicle auctions or persons performing repairs solely for such auctions; and (5) repair shops located in public schools or charter technical career centers.

four-year statute of limitation for "actions founded on statutory liability"); *Hoffman v. Jones*, 280 So.2d 431, 440 (Fla. 1973) (explaining applicability of the law as pronounced in Florida Supreme Court's decision on existing cases and cases commenced after that decision becomes final). That would place untold numbers of consummated and pending transactions in jeopardy.

According to the Florida Department of Motor Vehicles and Highway Safety, in 2023, there were 391,428 traffic crashes in Florida, which amounts to 1,072 crashes per day. *See*, "Traffic Crash Reports, Crash Dashboard," https://www.flhsmv.gov/traffic-crash-reports/crash-dashboard/. When those numbers are extrapolated over the four-year statute of limitations period, it translates into billions of dollars of repair expenses previously paid by Florida insurance companies, and even more money for repairs to be performed in the future.

Moreover, other states have motor vehicle repair acts and consumer protection requirements similar to the FMVRA. *See, e.g.*, § 42–9–101, Colo. Rev. Stats. ("Motor Vehicle Repair Act of 1977); § 20-354, N.C. Gen. Stat. ("North Carolina Motor Vehicle Repair Act"); Ch. 4775, Ohio Rev. Code ("Motor Vehicle Repair and Window Tint

Operators"); Ohio Admin. Code Rule 109:4-3-13 ("Motor Vehicle Repairs or Services"); Wisc. Admin. Code Ch. ATCP 132 ("Motor Vehicle Repair"). This Court's decision could be considered as persuasive authority by courts in other jurisdictions with similar repair acts.

In its federal lawsuit, Geico contends the FMVRA should be expansively construed beyond its plain text to authorize a non-injured non-customer insurer to file a private cause of action for recoupment of payments it previously made to a shop for repairs made to an insured customer's vehicle on grounds that the shop allegedly violated the FMVRA, even though it is undisputed that: (a) the damages done to the vehicles were covered by the insurance policy, (b) the customers authorized the shop to perform the covered repairs, and (c) there is no evidence the customers had any dissatisfaction, complaints, injuries, or damages arising from any alleged FMVRA violations.

The Eleventh Circuit's decision confirms that all of the 1,773 insured customers involved in Geico's lawsuit are satisfied with the repairs performed by the defendant windshield shop. *See, Gov't Employees Ins. Co.,* 85 F.4th at 1138 ("this appeal involves no

customer complaints"). Irrespective of Geico's failure to present evidence of a single disgruntled customer, if this Court answers the certified questions in the affirmative, an insurer's ability to file a recoupment action against a repair shop could be triggered by an insignificant violation, such as the shop's failure to identify the customer's vehicle year, odometer reading, or intended method of payment on the repair estimate--despite the insured customer's lack of injury or damages. *See*, §559.905(1)(d), Fla. Stat. (requiring shop's repair estimate to identify the "year, make, model, odometer reading, and license tag number of the motor vehicle"); §559.905(1)(j), Fla. Stat. (requiring shop's repair estimate to identify the "customer's intended method of payment"). As such, Geico is seeking to recover broader remedies than those provided by the FMVRA to an actual customer.

Accordingly, Geico's request to expand the FMVRA's plain text will have enormous economic implications on the repair industry and its customers, and deserves cautious examination.

(c) History of the FMVRA

The FMVRA was enacted in 1980 and took effect on January 1, 1981. *See,* Ch. 80-139, Laws of Fla. (1980). As originally enacted,

Section 559.902, Florida Statutes (Supp. 1980) stated:

> Scope and application.--This act shall only apply to consumer transactions. A consumer transaction may be characterized as one in which the customer is a natural person requesting repair work on a motor vehicle....

As originally enacted, Section 559.903(3), Florida Statutes (Supp. 1980) defined a "customer" as "the person who signs the written repair estimate, or any other person whom the person who signs the written repair estimate designates on the written repair estimate as a person who may authorize repair work." This same definition is still found in the current version of that statute, but in a different subsection. *See*, §559.903(2), Fla. Stat. (2024).

As originally enacted, Section 559.923, Florida Statutes (Supp. 1980) provided the following remedies:

> 559.923 Remedies.—
>
> (1) Any **customer injured by a violation** of this part may bring an action in the appropriate court for relief. The prevailing party in that action may be entitled to **damages** plus court costs and reasonable attorney's fees. The customer may also bring an action for **injunctive relief** in the circuit court.
>
> (2) The **state attorney**, if a violation of this part occurs in his judicial circuit, may bring an action for injunctive relief or other appropriate civil relief for violation of this part, including a civil penalty of $500 per each violation, damages for injured customers, court

> costs and reasonable attorney's fees. If the **state attorney** fails to act upon a violation within 60 days after a written complaint has been filed with the state attorney, the **Department of Legal Affairs** may initiate judicial proceedings for the same relief to which the state attorney is entitled under this subsection.
>
> (3) The remedies provided for in this section shall be in addition to any other remedy provided by law.

(Emphasis added). Thus, as originally enacted, the FMVRA provided no remedies, causes of action, or affirmative defenses to a non-injured non-customer insurer. Nonetheless, an insurer (or anyone else) aggrieved by a FMVRA violation, could still seek relief from a local state attorney or the Department of Legal Affairs.

Since 1980, the FMVRA has been amended by 23 different session laws. The word-limitations imposed on this brief prevent a recitation of each amendment enacted by those 23 session laws. However, the amendments which are most pertinent to this appeal are discussed below. None of those amendments created a private cause of action, affirmative defense, or other remedy for a non-injured non-customer insurer.

The very purpose of this consumer protection law is to empower aggrieved consumers to pursue a repair shop for failing to protect their rights, often involving small amounts of damages.

This is why the Legislature permits the recovery of attorney fees. Otherwise, no attorney would undertake these matters. The FMVRA was not created to enable economically powerful insurance companies to impose compliance of their interests on repair shops under the constant threat of litigation and liability for the insurers' legal expenses. An insurer's interests in minimizing payments on claims is often diametrically opposed to the consumer's interest in obtaining the safest, best repair. Allowing the result urged by Geico would subvert the purpose of a meaningful consumer protection law, and force repairers to serve the best interests of insurer dictates, instead of the best interests of consumers. Insurers already have the resources to pursue litigation without the FMVRA. Adopting Geico's arguments will allow insurers to drive out-of-business with constant burdensome litigation those shops who serve consumers' interests rather than insurers' interests. This would defeat the FMVRA's laudable intended purpose of protecting injured *consumers*.

After 1980, Section 559.902 ("Scope and application") was amended three times. In 1993, the amendment substantially revised Section 559.902 to closely resemble the current 2024

version, which is directed to the type of shops that are governed by the FMVRA, as opposed to being directed at "consumer transactions." *See*, Ch. 93-219, §2, Laws of Fla. (1993). In 2001, a new subsection (5) was added to Section 559.902 which created an exemption for repair shops "located in public schools...or charter technical career centers." *See,* Ch. 2001-214, §16, Laws of Fla. (2001). A 2002 amendment involved a minor change to statutory cross-references. *See,* Ch. 2002-387, §1029, Laws of Fla. (2002). Although the original focus of Section 559.902 was changed in 1993 from "consumer transactions" to various types of repair shops, the "scope and application" of the FMVRA has never been expanded to subject those repair shops to any private causes of action or affirmative defenses asserted by a non-injured non-customer insurance company.

In 1993, the Legislature also enacted a new Section 559.920, Florida Statutes which includes a list of various "unlawful acts or practices" that violate the FMVRA. *See*, Ch. 93-219 at §12. Importantly, subsection (10) of the new Section 559.920 identified the following unlawful act or practice:

> (10) Substitute used, rebuilt, salvaged, or

> straightened parts **for** new replacement parts **without notice to the motor vehicle owner and to his insurer if the cost of repair is to be paid pursuant to an insurance policy and the identity of the insurer or its claims adjuster is disclosed to the motor vehicle repair shop**[.]

(Emph. added).

Notably, Section 559.920(10) does not require any of notice to an "insurer" concerning the repair of a damaged windshield or for the replacement of a damaged windshield with "new replacement parts." Under the "*expressio unius est exclusio alterius*" canon of construction, it is presumed "the Legislature purposefully excluded" such repairs and new replacement parts from the purview of the "unlawful acts or practices" enumerated in Section 559.920. *See, e.g., State v. Miller,* 227 So.3d 562, 564 (Fla. 2017).

Importantly, Section 559.920(10) has never been amended and the same text remains in the current version of that statute. Moreover, before 2023, Section 559.920(10) was the only FMVRA provision that included any reference to an "insurer." This is important because Geico's pleadings and motions for summary judgment in this federal lawsuit do not allege any violations of Section 559.920(10).

In another 1993 amendment, the state agency responsible for enforcing the FMVRA was changed from the Department of Legal Affairs to the Florida Department of Agriculture and Consumer Services. *See*, Ch. 93-219 at §3 (defining the "Department").

Also in 1993, Section 559.923 was renumbered to Section 559.921 and substantially revised. *See*, Ch. 93-219 at §12. Among other things, Section 12 granted the "Department" authority to process consumer complaints and to otherwise administratively enforce the provisions of the FMVRA against noncompliant shops through administrative proceedings under Chapter 120, Florida Statutes. This provides for the imposition of administrative fines and the suspension or revocation of a shop's registration to do business in Florida. *See*, §559.923(4), Fla. Stat. (1993). Pursuant to additional amendments enacted after 1993, the current version of Section 559.923(4) identifies additional administrative remedies that can be imposed by the "Department," which include placing the noncompliant shop on "probation, subject to such conditions as the department may specify." *See*, §559.923(4)(b)5, Fla. Stat. (2024).

In addition to those administrative remedies, Section 12 of Chapter 93-219 also granted the "Department" and the local state

attorneys the right to bring civil actions in circuit court against noncompliant shops for injunctive relief and "other appropriate civil relief," including civil monetary penalties, as well as "restitution and damages for injured customers." Section 12 also granted "exclusive authority" to the Florida Department of Highway Safety and Motor Vehicles and local state attorneys to seek the same type of administrative and judicial remedies against licensed "motor vehicle and recreational vehicle dealers." *See,* §559.923(6), Fla. Stat. (1993-2024).

Importantly, Section 12 of Chapter 93-219 also created Section 559.923(7), which states:

> (7) If, in any proceeding brought pursuant to this part, it is determined that the repairs and costs thereof were in fact authorized, orally or in writing, the repairs were completed in a proper manner, and the consumer benefited therefrom, then the enforcing authority may consider such factors in assessing penalties or damages and may award the reasonable value of such repairs.

The same provision remains unchanged in the current version of Section 559.923(7) and confirms that a complete refund is not required by the FMVRA.

Despite the administrative and judicial remedies granted in Section 12 of Chapter 93-219 to the Florida Department of

Agriculture and Consumer Services, the Florida Department of Highway Safety and Motor Vehicles, and local state attorneys, Section 12 retained the private cause of action for the judicial remedies created in former Section 559.923(1) (now Section 559.921(1)) for a "customer injured by a violation of" the FMRVA, and that private cause of action for injured customers remains unchanged and intact to this date.

Finally, in 2023, the Legislature amended the FMVRA for the first time to specifically address activities of windshield shops. *See,* Ch. 2023-136, Laws of Fla. (2023). The list of "unlawful acts and practices" in Section 559.920 was expanded to include the following new violations:

> (17) Offer to a customer a rebate, gift, gift card, cash, coupon, or any other thing of value in exchange for making an insurance claim for motor vehicle glass replacement or repair, including, but not limited to, calibration or recalibration of an advanced driver assistance system. A nonemployee who is compensated for the solicitation of insurance claims is also prohibited from making such offer.
>
> (18) Fail to provide electronic notice or written notice in at least 12-point type to the customer whether the calibration or recalibration of the advanced driver assistance system is required as part of the replacement or repair of motor vehicle glass to make such system operable and to ensure such service is performed in a

manner that meets or exceeds the vehicle manufacturer's specifications.

See, Ch. 2023-136 at §2.

Section 559.920(10) and the new Section 559.920(17) contain the only references to "insurers" and "insurance" in the entire FMVRA. However, in this case, Geico has not alleged violations of either subsection. Instead, Geico alleges violations of FMVRA provisions that do not address insurers or insurance.

Since the FMVRA was enacted in 1980, neither its original text nor any amendments (including the 2023 amendments directed at windshield shops) have created private causes of action, affirmative defenses, or other remedies that can be sought by a non-injured non-customer insurer. Nonetheless, Geico relies on the FMVRA to seek a complete refund of its prior payments to Glassco, even though that is far greater relief than the FMVRA affords to the 1,773 customers in this case who have no complaints concerning Glassco's repairs.

(c) Judicial rejections of attempts by insurance companies to rely on the FMVRA

Within the context of the many amendments to the FMVRA, there have been many federal and state trial court orders issued

over the past several years that uniformly rejected attempts by Geico and other insurers to rely on the FMVRA to avoid paying for covered repairs provided to their insureds' vehicles. Those decisions are cited at page 4-5 of the Appellees' answer brief. Despite those many orders, no amendments to the FMVRA (including the most recent 2023 amendments) have extended any judicial remedies to a non-injured non-customer insurer. This situation creates a presumption that the Legislature agrees with those orders, all of which are consistent with the FMVRA's plain text. *City of Hollywood v. Lombardi*, 770 So.2d 1196, 1202 (Fla. 2000).

In addition to those trial court orders, the Florida Second District Court of Appeal very recently issued an appellate opinion that summarily rejected Geico's attempt to assert alleged FMVRA violations against a windshield shop that performed a covered windshield replacement for Geico's insured. *See, Geico Gen. Ins. Co. v. Superior Auto Glass of Tampa Bay, Inc.*, --So.3d--, 2024 WL 171904, *1 (Fla. 2d DCA Jan. 17, 2024)("we reject GEICO's arguments regarding...its Florida Motor Vehicle Repair Act claim without further comment"). As of the filing date of this brief, the 15-day deadline to seek rehearing and/or clarification of the Second

District's opinion has not yet expired. *See,* Fla. R. App. P. 9.330(a)(1). As such, that opinion is not final and is subject to modification. Nonetheless, in one sentence, the Second District swiftly dispensed with Geico's attempt to rely on the FMVRA to justify its underpayment of a covered windshield replacement provided to an insured customer.

(d) Geico has no standing to interfere with transactions between its insured and his chosen repair shop

Legal determinations that affect a consumer's rights to receive the bargained-for benefits provided by his insurance policy, and legal determinations that substitute the consumer with his insurer as the party-in-interest to a repair contract adversely impact consumers, their chosen repair shops, and vehicle safety. In this case, Geico (a non-party to the repair contracts between numerous insured customers and their chosen windshield shop) is attempting to usurp the rights of those insured customers and dictate conditions of performance upon their chosen windshield shop, with hopes of being authorized by this Court to do the same thing to the entire repair industry.

Allowing insurers (who are non-parties to the repair contracts)

to invalidate such contracts is detrimental to the actual contracting parties and will adversely impact the rights of consumers to freely contract for and obtain high-quality parts and repairs, and will interfere with the rights of businesses to contract with consumers and to be appropriately paid for the goods and services they provide to restore their customers' vehicles to a safe condition.

For insurance-paid vehicle repairs, there are two separate contracts, and only the insured consumer is a party to both. The first contract is the insurance policy purchased from an auto insurer. In that contract, the insurer promises to reimburse its insured for an amount that is reasonably required to properly and safely repair the vehicle, up to a stated limitation of liability. Geico's policy expressly affords its insureds "the right to choose any repair facility" they want to use and promises to pay the "prevailing competitive price" for a covered repair. *See, Superior Auto Glass of Tampa Bay, a.a.o. Jean Fontaine v. Geico Gen. Ins. Co.*, 29 Fla. L. Weekly Supp. 201a, ¶6 (Hillsborough Cnty. Ct. July 20, 2021), *affirmed*, 353 So.3d 1162 (Fla. 2d DCA 2022); *Glassco, Inc., a.a.o. G. Mercado v. Geico Gen. Ins. Co.*, 30 Fla. L. Weekly Supp. 174a, ¶1 (Hillsborough Cnty. Ct. Dec. 17, 2021), *cert. den.*, 345 So.3d 281

(Fla. 2d DCA 2022).

The second contract is the agreement between the consumer and his chosen repair shop. Under that contract, the insured consumer is entitled to obtain the highest quality parts and repair professional he can find, to ensure the vehicle will be properly repaired. Motor vehicles are complicated and dangerous instrumentalities, which must be restored by professional repairers for safe operation on the roads and highways. Liability for improper repairs falls on the repairer, not an insurer, and it is the repairer who must answer for improper repairs to the consumer, the passengers of the vehicle, and everyone encountered on the roadways.

For example, after an accident, a consumer might want to have the damaged vehicle repaired by the dealership's service department or a respected shop that specializes in repairing the same type of vehicle with high-quality parts, instead of a bargain-basement shop that employs inexperienced and underpaid laborers and installs inferior knock-off parts. That decision is up to the customer, as confirmed by Geico's own policy language that affords its insureds "the right to choose any repair facility."

Once the repairs are performed, the customer is then entitled to recover payment of the benefits promised by the first contract, which is the insurance policy. Geico's policy promises to pay the "prevailing competitive price" for those repairs. The customer's liability for charges (if any) that exceed the policy's limit of liability is governed by the terms of the second contract between the customer and the repair shop. Regardless, the customer is entitled to receive the benefit of his bargain under both contracts.

Importantly, the customer's insurer is not a party to the second contract between the customer and his chosen repair shop, and has no standing to interfere with that contract. *De Soleil S. Beach Residential Condo. Ass'n, Inc. v. De Soleil S. Beach Ass'n, Inc.*, 315 So.3d 58, 61 (Fla. 3d DCA 2020) ("non-party to a contract generally cannot raise, as a defense, the violation of the terms of that contract").

Geico is attempting to use the FMVRA as a tool to interfere with and nullify the contracts between Glassco and its satisfied customers, to avoid complying with Geico's promise in its insurance contract to pay the "prevailing competitive price." Geico's reasons for this interference have nothing to do with an altruistic desire to

protect the public from FMVRA violations. Instead, this is about minimizing Geico's payments for claims. Case law confirms Geico is often unable to satisfy its burden of proving that its arbitrary low-ball payments comply with its "prevailing competitive price" provision. *See, e.g., Fontaine*, 29 Fla. L. Weekly Supp. 201a, at ¶32 (Geico failed to prove it paid the "prevailing competitive price"); *Gov't Employees Ins. Co. v. . Superior Auto Glass of Tampa Bay, Inc., a.a.o. Chris Laibinis*, 28 Fla. L. Weekly Supp. 988b (Fla. 13th Jud. Cir. Ct. App. Div. Dec. 29, 2020) (windshield shop sued Geico for underpayment of windshield claim and Geico "ultimately confessed judgment"); *Patriot Auto Glass, a.a.o. Felicia Seedorf v. Geico Indem. Co.*, 27 Fla. L. Weekly Supp. 752a (Broward Cnty. Ct. Sept. 20, 2019) (summary judgment against Geico for failure to present evidence that it paid the "prevailing competitive price").

Indeed, as observed by the Eleventh Circuit's decision, Geico attempted to override its insurance contract's "prevailing competitive price" provision by "circulat[ing] a letter to repair shops, stating that it would only reimburse a deeply discounted amount" instead of the "prevailing competitive price" required by its insurance policies. *Gov't Employees Ins. Co.*, 85 F.4th at 1138.

Because the "deeply discounted" terms of that 2012 letter are not part of Geico's insurance policies, windshield shops (including like Glassco) have been successfully prevailing in "small claims" lawsuits against Geico ever since then. *See, e.g., Fontaine*, 29 Fla. L. Weekly Supp. 201a, at fn. 6 (noting that Geico's discounted payment parameters were not made part of the insurance policy). Geico attempts to rely on the FMVRA simply to circumvent its breaches of its own contractual promise to pay the "prevailing competitive price" required by its policies.

(e) Geico can pursue other available remedies

If Geico is truly concerned about enforcing the FMVRA for the public good, there are several ways to do that. First, Geico can lodge complaints with the Florida Department of Agriculture and Consumer Services, the Florida Department of Highway Safety and Motor Vehicles, and/or local state attorneys, pursuant to Section 559.921(2) and (4), which authorize those governmental entities to require noncompliant shops to pay penalties, restitution and/or damages, and/or to stop doing business in Florida.

Second, Geico can contractually "elect to repair" the vehicle by becoming the general contractor on the repair and requiring

repairs to be performed by its designated sub-contractor repair shops. *Auto-Owners Ins. Co. v. Green,* 220 So.2d 29, 30 (Fla. 1st DCA 1969)(auto insurance policy gave insurer the option to either repair the damaged vehicle or pay the full amount of such loss). Under such an arrangement, Geico would have to promise that the damaged vehicle will be restored to its prior performance and appearance, and would also have to provide discounted premiums. *See,* §626.9743(3), Fla. Stat. (insurer that elects to repair a vehicle and requires a particular repair shop shall cause the damaged vehicle to be restored to its physical condition as to performance and appearance immediately prior to the loss at no additional cost to the insured or third-party claimant other than as stated in the policy); §627.7291(3), Fla. Stat. ("An insurer...must provide an actuarially sound discount to the insured if they offer, and an insured accepts, a policy that contains a repair arrangement for the provision of windshield glass replacement, repair, or calibration services or windshield glass products."). Thus, Geico has the legal authority to entirely control the cost and manner of repairs, as long as Geico accepts the liability for them and provides discounted premiums to its insureds.

Another option is for Geico to use its clout as one of the world's largest insurance companies to lobby the Legislature to amend the FMVRA to provide relief to non-injured non-customer insurers. Because the FMVRA "is a legislative creation," it is up to the Legislature to "define[] who has standing to seek this relief." *Alcon v. Collins*, 334 So.3d 717, 719 (Fla. 1st DCA 2022). As explained by a former Chief Justice of the Florida Supreme Court:

> ...If a regulation adopted by the legislature does not serve the public interest, or achieves a purpose not desired by the public, the forum in which persons desiring to change the law should seek relief is the legislature. Policy questions are essentially political questions and must be left, under our constitutional form of government, to the elected lawmakers.

Dep't of Ins. v. Dade Cnty. Consumer Advocate's Office, 492 So.2d 1032, 1043 (Fla. 1986) (Boyd, C.J., dissenting). *See also, Solid Waste Auth. of Palm Beach Cnty. v. Parker*, 622 So.2d 1014, 1015 (Fla. 4th DCA 1993) (when litigants believe a statute achieves the wrong result, "they should ask the legislature to change the law").

Geico had the opportunity to seek such an amendment in 2023, when the Legislature amended the FMVRA to target windshield shops, but Chapter 2023-136 does not include such amendments.

This Court should not violate the "separation of powers" doctrine by invading the exclusive province of the Legislature's elected members to enact such amendment. *Sebring Airport Auth. v. McIntyre,* 783 So.2d 238, 244 (Fla. 2001)(judiciary has an obligation under the Florida Constitution's separation of powers provision to construe statutes "in strict accord with the legislative will").

CONCLUSION

WHEREFORE, AEPI requests this Court to answer the certified questions in the negative.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 25th day of JANUARY, 2025, a true and correct copy hereof was **electronically filed** with the Clerk of the Court, and was **electronically served** on:

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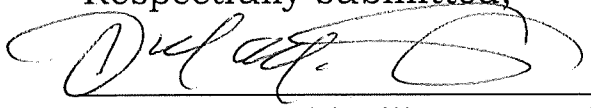
CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY that this computer-generated document is printed in Bookman Old Style 14-point font, complies with the applicable font and word count limit requirements of Florida Rules of Appellate Procedure 9.045, 9.210, and 9.370(b), and does not exceed 5,000 words (excluding the words in any caption, cover page, table of contents, table of citations, certificate of compliance, certificate of service, and signature block) as indicated by the word count of the word-processing system used to prepare this document.

Respectfully submitted,



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