

IN THE SUPREME COURT OF FLORIDA

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NO. SC23-1540

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

Appellants,

v.

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

Appellees.

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ON CERTIFIED QUESTION FROM THE UNITED STATES COURT OF  
APPEALS FOR THE ELEVENTH CIRCUIT  
CASE No. 23-11056

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APPELLEES' ANSWER BRIEF

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## **RESPONSE TO GEICO'S "INTRODUCTION"**

The brief filed by the Appellants, Government Employees Insurance Company, et al. ("**Geico**"), begins with a highly improper ten-page "Introduction," which lacks citations to the record, relies on fictional allegations that are unsupported by evidence in the record, contains unsupported legal arguments,<sup>1</sup> and is generally immaterial to the U.S. Eleventh Circuit Court of Appeals' certified questions which involve purely matters of statutory interpretation. (IB/1-10).<sup>2</sup>

Instead of focusing on the plain language of the Florida Motor Vehicle Repair Act (the "**Repair Act**"), Geico's Introduction is an off-topic narrative which ascribes fictionalized bad acts and bad motives to the Appellees, Glassco, Inc. ("**Glassco**"), John Bailey, Jason Wilemon, and Andrew Victor, *ipse dixit*, in an effort to suggest the existence of a purported crisis in the auto glass repair industry, all of which is completely unsupported and outside of the record. Accordingly, this Court should at least disregard, if not strike,

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<sup>1</sup> Notably, Geico's numerous references to a "clear record" supposedly demonstrating that the Appellees did not comply with the Repair Act "at all," (IB/29-31, 49 (fn. 6)) are belied by the fact that Geico's motion for summary judgment concerning these very same *ad hominem* claims was denied for lack of evidence. (DE-148 at 49-54).

<sup>2</sup> Citations to "**IB**" refer to the initial brief, to "**DE**" refer to the District Court's docket entries in the record on appeal, and to "**A**" refer to the Appellees' appendix.

Geico's "Introduction." *Altchiler v. State Dep't of Prof. Reg.*, 442 So.2d 349, 350 (Fla. 1<sup>st</sup> DCA 1983).

Besides being unsupported by the record, Geico's "Introduction" is improperly aimed at attributing pejorative motives to Florida's independent auto glass repair industry, which are actually contradicted by the record. If anything, the record establishes that since at least 2012, Geico has been engaged in an abusive, long-running (but losing) campaign against reputable glass repair shops who submit legitimate claims which Geico either grossly underpays or pays nothing at all. (DE-129-1 at 1).

The record demonstrates that Geico's federal lawsuit is merely an improper "SLAPP" suit,<sup>3</sup> which was filed to impose an "*in terrorem*" effect on reputable repair shops who are forced to regularly sue Geico in state "small claims" court, and to bully them into submission by inflicting upon them the stigma and expense associated with defending a complex federal lawsuit which frivolously (and hypocritically) labels them as frauds and racketeers. (DE-189-1 at 5-6; A/49 at 46:11-13). A published litigation "playbook,"

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<sup>3</sup> See, §768.295, Fla. Stat. (prohibiting Strategic Lawsuits Against Public Participation or "SLAPP" suits). Florida's SLAPP statute has been applied to deter lawsuits brought in federal court. *Bongino v. Daily Beast Co., LLC*, 477 F.Supp.3d 1310, 1321 (S.D.Fla. 2020).

authored by Geico’s own attorneys,<sup>4</sup> explains that after filing these federal actions, which should contain “aesthetically compelling” narratives of fraud—just like Geico’s unsupported “Introduction” to its brief—an insurer can use a federal lawsuit as a basis to seek a stay of the repair shop’s pending state court actions, and to deprive the repair shops of financial resources to mount a defense, placing even more pressure on the repair shop to succumb to Geico’s underpayment/nonpayment scheme. (DE-189-1 at 5-6).

Panel members of the Eleventh Circuit at oral argument recognized this reality:

[Judge Hull]: [A]ll the vendors are winning all these cases in state court, and the state court says [Geico] can’t discount this; the invoice price is fair and reasonable and [Glassco] is entitled. I mean, talk about unjust enrichment, all these state courts have said [to Geico] there’s no unjust enrichment, pay the full value of the invoice. It’s fair and reasonable. They’ve been tried. It goes on and on. I don’t understand why we’re in federal court, I guess, on all of this.

(A/28 at 25:20-26:5).

....

[Judge Hull]: And the state courts are saying they’re not only entitled to payment, they’re entitled to all of it. And all of this is going on in thousands of state court cases, but yet a federal court is over here with this claim. Why is that not collateral estoppel at least against Geico?... Yeah, but that’s the whole issue here. [Geico doesn’t]

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<sup>4</sup> See, *No Fault Insurance Anti-Fraud Litigation: A Practitioner’s Guide* (ABA June 1, 2019). An excerpt of this “playbook” can be found at DE-189-1.

think [it] would have as good a hearing in full and fair state court. That's the problem. I wish [Glassco] had appealed the SLAPP Act ruling, because there's a lot of SLAPP conduct going on here, but [Glassco] didn't appeal that ruling.

(A/47-49 at 44:20-46:14).

With respect to the Eleventh Circuit's certified questions (i.e., whether an insurer is a "customer" under the Repair Act, and whether the Repair Act permits Geico to pay nothing for insurance claims), the truth is that every state and federal court to answer those questions—including two separate federal District Court judges in this case on three separate occasions—has found that an insurer, like Geico, is not a "customer" and that, even if it was, the Repair Act is otherwise inapplicable. Those cases include:

*Gov't Employees Ins. Co. v. Glassco, Inc.* 2021 WL 8775761 (M.D.Fla. Oct. 14, 2021)(Geico not customer, no voiding penalty);

*Gov't Employees Ins. Co. v. Glassco, Inc.* 2021 WL 4392727, \*8 (M.D.Fla. Sept. 24, 2021)(same);

*Allstate Ins. Co. v. Auto Glass America, LLC*, 418 F.Supp.3d 1009, 1024-1025 (M.D.Fla. 2019);

*Government Employees Ins. Co. v. Martineau*, Case No. 8:19-cv-01382-MSS-SPF (DE-80 at 10-14)(A/52-78);

*Shazam Auto Glass, LLC v. Geico Gen. Ins. Co.*, Case No. 18-CC-013421, "Order Granting Plaintiff's Motion for Partial Summary Judgment as to Defendant's Fourth Affirmative Defense" (Hillsborough Cnty. Ct. Mar. 8, 2022 (same)(A/79);

*Shazam Auto Glass, LLC v. Geico Gen. Ins. Co.*, Case No. 20-CC-038828, “Order Granting Plaintiff’s Motion for Summary Disposition as to Applicability of the [Repair Act]” (Hillsborough Cnty. Ct. Nov. 16, 2021)(Geico not customer and Repair Act not applicable)(A/81);

*Superior Auto Glass of Tampa Bay v. Geico Gen. Ins. Co.*, 29 Fla. L. Weekly Supp. 472a, ¶42 (Hillsborough County Ct., Aug. 13, 2021)(Geico not customer and Repair Not Applicable);

*Superior Auto Glass of Tampa Bay, Inc. v. Gov’t Employees Ins. Co.*, Case No. 17-CC-041286, “Order Granting Plaintiff’s Motion in Limine Concerning Florida Motor Vehicle Repair Act and Standing,” (Hillsborough Cnty. Ct. Apr. 9, 2021)(Geico not a customer and Repair Act not applicable)(A/82);

*Certified Windshield, LLC v. Geico Indemn. Co.*, Case No. 13-CC-33676, “Order on Plaintiff’s Motion in Limine Concerning Repair Act,” (Hillsborough Cnty. Ct., March 31, 2021)(precluding Geico from presenting evidence or arguments regarding alleged Repair Act violations)(A/84);

*Quality Counts Auto Glass, LLC v. State Farm Mut. Auto. Ins. Co.*, Case No. 19—CC-006280 “Order Granting Plaintiff’s Motion for Partial Summary Judgment” (Hillsborough Cnty. Ct. Oct. 23, 2019)(Repair Act not applicable to insurers)(A/86);

*Quality Counts Auto Glass, LLC v. State Farm Mut. Ins. Co.*, Case No. 17-CC-25939, “Order on Competing Motions for Summary Disposition,” (Hillsborough Cnty. Ct. May 23, 2018)(Repair Act does not provide remedies or defenses to claim for insurance company)(A/89);

*Glassco v. Geico Gen. Ins. Co.*, Case No. 16-CC-031285, “Order Granting Plaintiff’s Motion for Summary Judgment,” p.9 (Hillsborough Cnty. Ct. June 15, 2023)(Geico not covered by Repair Act)(A/99);

*Shazam Auto Glass, LLC v. Geico Gen. Ins. Co.*, 31 Fla. L. Weekly Supp. 322b (Hillsborough Cnty. Ct. Aug. 1, 2023)(Geico not Repair Act customer).

In the above-cited state court cases, Geico attempted to assert the windshield shop's alleged Repair Act violations as an affirmative defense to justify its refusal to pay anything to the windshield shop. Besides the fact that the Repair Act clearly provides no private cause of action to a customer's insurer, it also does not create any affirmative defenses for them either. *Compare, Smiley v. State*, 966 So.2d 330, 335 (Fla. 2007) ("section 776.013 created a new affirmative defense for situations in which one may use deadly force without first retreating").

Geico's failure to even mention these decisions underscores the improper, incomplete, and misleading nature of its "Introduction" and demonstrates that Geico did not truly want to provide the Court with an accurate overview of the issues before the Court through its "Introduction," but instead wants to "poison the well" with false and unsupported hyperbole. Geico's failure to address these numerous Repair Act decisions--many of which Geico has unsuccessfully appealed in the state appellate court system—not only foreshadows the meritless nature of Geico's substantive arguments, but confirms that the federal case was improperly motivated, as acknowledged by at least one Federal Circuit judge. (A/49 at 46:11-14).

If anyone is plaguing Florida's courts, it is Geico. To date, Geico has lost dozens of cases at the trial court level, dozens of appeals from adverse

final judgments, and numerous extraordinary writ proceedings which Geico filed to seek abatement of various state court actions pending the outcome of its frivolous offensive federal “RICO” lawsuits against windshield shops who refuse to accept Geico’s underpayments or non-payments. So far, out of the following 64 appeals or extraordinary writ cases filed by Geico in the Florida Second District Court of Appeal involving windshield claims (many of which include Geico’s meritless Repair Act arguments), Geico has not yet won a single one:

| <b>Case No.</b> | <b>Style</b>                                                                      | <b>Disposition</b>    |
|-----------------|-----------------------------------------------------------------------------------|-----------------------|
| 2D21-0098       | <i>Geico v. Superior Auto Glass of Tampa Bay, Inc., a.a.o. Chris Laibinis</i>     | Certiorari denied     |
| 2D21-0239       | <i>Geico v. Patriot Auto Glass, a.a.o. R. Hodzia, et al.</i>                      | Voluntarily dismissed |
| 2D21-0359       | <i>Geico v. Glassco, Inc., J. Bazan, et al.</i>                                   | PCA                   |
| 2D21-0382       | <i>Geico v. Shazam Auto Glass, LLC, a.a.o. Kayla Ellis</i>                        | Certiorari Denied     |
| 2D21-0750       | <i>Geico v. Superior Auto Glass of Tampa Bay, Inc., a.a.o. Jeremy Benton</i>      | Voluntarily dismissed |
| 2D21-0968       | <i>Geico v. Superior Auto Glass of Tampa Bay, Inc., a.a.o. Matthew Dick</i>       | Voluntarily dismissed |
| 2D21-2593       | <i>Geico v. Superior Auto Glass of Tampa Bay, Inc., a.a.o. Angelique Matheson</i> | PCA                   |
| 2D21-2600       | <i>Geico v. Superior Auto Glass of Tampa Bay, Inc., a.a.o. Gerald Alicea</i>      | PCA                   |
| 2D21-2606       | <i>Geico v. Superior Auto Glass of Tampa Bay, Inc., a.a.o. Gabor Geszti</i>       | PCA                   |
| 2D21-2610       | <i>Geico v. Superior Auto Glass of Tampa Bay, Inc., a.a.o. Gary Booker</i>        | PCA                   |

|           |                                                                              |                       |
|-----------|------------------------------------------------------------------------------|-----------------------|
| 2D21-2613 | <i>Geico v. Superior Auto Glass of Tampa Bay, Inc., a.a.o. Jean Fontaine</i> | PCA                   |
| 2D21-2806 | <i>Geico v. Shazam Auto Glass, LLC, a.a.o. Nicole Konopka</i>                | PCA                   |
| 2D21-2807 | <i>Geico v. Shazam Auto Glass, LLC, a.a.o. Charles Dean</i>                  | PCA                   |
| 2D21-2809 | <i>Geico v. Shazam Auto Glass, LLC, a.a.o. Korey Jones</i>                   | PCA                   |
| 2D21-2810 | <i>Geico v. Shazam Auto Glass, LLC, a.a.o. Carl Talbert</i>                  | PCA                   |
| 2D21-3816 | <i>Geico v. Shazam Auto Glass, LLC, a.a.o. Sharie Denn</i>                   | Certiorari denied     |
| 2D21-3817 | <i>Geico v. Shazam Auto Glass, LLC, a.a.o. Pablo Corrales</i>                | Certiorari denied     |
| 2D21-3818 | <i>Geico v. Shazam Auto Glass, LLC, a.a.o. Brian Bregman</i>                 | Certiorari denied     |
| 2D21-3819 | <i>Geico v. Shazam Auto Glass, LLC, a.a.o. Dillon Detres</i>                 | Certiorari denied     |
| 2D22-0153 | <i>Geico v. Glassco, Inc., a.a.o. G. Mercado</i>                             | Certiorari denied     |
| 2D22-0214 | <i>Geico v. Shazam Auto Glass, LLC, a.a.o. Marjorie Cherry</i>               | Voluntarily dismissed |
| 2D22-0603 | <i>Geico v. Shazam Auto Glass, LLC, a.a.o. Carmon Mays</i>                   | Certiorari dismissed  |
| 2D22-0604 | <i>Geico v. Shazam Auto Glass, LLC, a.a.o. Anthony Smith</i>                 | Certiorari dismissed  |
| 2D22-1041 | <i>Geico v. Shazam Auto Glass, LLC, a.a.o. Dylan Caraballo</i>               | Certiorari denied     |
| 2D22-1043 | <i>Geico v. Shazam Auto Glass, LLC, a.a.o. Kenny Lyons</i>                   | Certiorari denied     |
| 2D22-1411 | <i>Geico v. Shazam Auto Glass, LLC, a.a.o. Andrew Heard</i>                  | Certiorari denied     |
| 2D23-0181 | <i>Geico v. Shazam Auto Glass, LLC, a.a.o. Angelo Johnson</i>                | Voluntarily dismissed |
| 2D23-0291 | <i>Geico v. Glassco, Inc., a.a.o. Fabian Cortez</i>                          | Voluntarily dismissed |
| 2D23-0293 | <i>Geico v. Glassco, Inc., a.a.o. A. Snavely</i>                             | Voluntarily dismissed |

|           |                                                            |                       |
|-----------|------------------------------------------------------------|-----------------------|
| 2D23-0294 | <i>Geico v. Glassco, Inc., a.a.o. Daisy Reyes</i>          | Voluntarily dismissed |
| 2D23-0296 | <i>Geico v. Glassco, Inc., a.a.o. Andrea Delgado</i>       | Voluntarily dismissed |
| 2D23-0298 | <i>Geico v. Glassco, Inc., a.a.o. Abdiel Sanchez</i>       | Voluntarily dismissed |
| 2D23-0300 | <i>Geico v. Glassco, Inc., a.a.o. D. Sanchez</i>           | Voluntarily dismissed |
| 2D23-0302 | <i>Geico v. Glassco, Inc., a.a.o. Francia Velveellaton</i> | Voluntarily dismissed |
| 2D23-0304 | <i>Geico v. Glassco, Inc., a.a.o. Brittny Barnett</i>      | Voluntarily dismissed |
| 2D23-0320 | <i>v. Glassco, Inc., a.a.o. A.Moreno</i>                   | Voluntarily dismissed |
| 2D23-0349 | <i>Geico v. Glassco, Inc., a.a.o. U. Porte</i>             | Voluntarily dismissed |
| 2D23-0351 | <i>Geico v. Glassco, Inc., a.a.o. L.Chiciquinga</i>        | Voluntarily dismissed |
| 2D23-0353 | <i>Geico v. Glassco, Inc., a.a.o. Sol Perez-Rodriguez</i>  | Voluntarily dismissed |
| 2D23-0354 | <i>Geico v. Glassco, Inc., a.a.o. Jessee Villegas</i>      | Voluntarily dismissed |
| 2D23-0356 | <i>Geico v. Glassco, Inc., a.a.o. Laura Pinzon</i>         | Voluntarily dismissed |
| 2D23-0358 | <i>Geico v. Glassco, Inc., a.a.o. F. Chariaten</i>         | Voluntarily dismissed |
| 2D23-0359 | <i>Geico v. Glassco, Inc., a.a.o. M. Medina</i>            | Voluntarily dismissed |
| 2D23-0368 | <i>Geico v. Glassco, Inc., a.a.o. Donald Chapman</i>       | Voluntarily dismissed |
| 2D23-0373 | <i>Geico v. Glassco, Inc., a.a.o. Quebeth Rodriguez</i>    | Voluntarily dismissed |
| 2D23-0376 | <i>Geico v. Glassco, Inc., a.a.o. Shawn Holder</i>         | Voluntarily dismissed |
| 2D23-0377 | <i>Geico v. Glassco, Inc., a.a.o. Osvaldo</i>              | Voluntarily dismissed |
| 2D23-0378 | <i>Geico v. Glassco, Inc., a.a.o. Dori Morales</i>         | Voluntarily dismissed |

|           |                                                                     |                       |
|-----------|---------------------------------------------------------------------|-----------------------|
| 2D23-0380 | <i>Geico v. Glassco, Inc., a.a.o. Teresita Diaz</i>                 | Voluntarily dismissed |
| 2D23-0381 | <i>Geico v. Glassco, Inc., a.a.o. J.Foweler</i>                     | Voluntarily dismissed |
| 2D23-0382 | <i>Geico v. Glassco, Inc., a.a.o. Luz Ortiz</i>                     | Voluntarily dismissed |
| 2D23-0383 | <i>Geico v. Glassco, Inc., a.a.o. U. Rivera-Tiradno</i>             | Voluntarily dismissed |
| 2D23-0385 | <i>Geico v. Glassco, Inc., a.a.o. S. Zanottie</i>                   | Voluntarily dismissed |
| 2D23-0386 | <i>Geico v. Glassco, Inc., a.a.o. Jackeline Gonzalez</i>            | Voluntarily dismissed |
| 2D23-0387 | <i>Geico v. Glassco, Inc., a.a.o. Gonzalo Escobar</i>               | Voluntarily dismissed |
| 2D23-0388 | <i>Geico v. Glassco, Inc., a.a.o. Patricia Medley</i>               | Voluntarily dismissed |
| 2D23-0560 | <i>Geico v. Shazam Auto Glass, LLC., a.a.o. Gabrielle Hernandez</i> | Voluntarily Dismissed |
| 2D23-0663 | <i>Geico v. Shazam Auto Glass, LLC., a.a.o. Brooks Sraver</i>       | Voluntarily Dismissed |
| 2D23-0692 | <i>Geico v. Shazam Auto Glass, LLC., a.a.o. Larry Nay</i>           | Voluntarily Dismissed |
| 2D23-0698 | <i>Geico v. Shazam Auto Glass, LLC., a.a.o. Lisette Rengifo</i>     | Voluntarily Dismissed |
| 2D23-1052 | <i>Geico v. Shazam Auto Glass, LLC., a.a.o. Yesinia Valentine</i>   | Voluntarily Dismissed |
| 2D23-1391 | <i>Geico v. Shazam Auto Glass, LLC., a.a.o. Ana Cruz Gonzalez</i>   | Voluntarily Dismissed |
| 2D23-1456 | <i>Geico v. Shazam Auto Glass, LLC., a.a.o. Demetria Richard</i>    | Voluntarily Dismissed |
| 2D23-1991 | <i>Geico v. Shazam Auto Glass, LLC., a.a.o. Lisa Simpson</i>        | Voluntarily Dismissed |

Notably in each of the five appeals cited as Case Nos. 23D-560 through 23D-1052, Geico raised Repair Act arguments, but after the parties had fully-briefed the issues, Geico voluntarily dismissed its appeal and the

Second District imposed attorneys' fees against Geico. Presumably, Geico did that to avoid receiving an adverse controlling Second District decision that the Eleventh Circuit would be required to follow in the case at bar. See, e.g., *Flintkote Co. v. Dravo Corp.*, 678 F.2d 942, 945 (11th Cir. 1982); *McMahan v. Toto*, 311 F.3d 1077, 1079-1081 (11th Cir. 2002).

In addition to the 64 appellate windshield claim losses that Geico has suffered in the Second District, the *Florida Law Weekly Supplement* reporter is replete with many published decisions that Geico lost for failure to present evidence to support its arbitrary underpayments to windshield shops. See, e.g., *My Clear View Windshield Repair, Inc., a.a.o. Myriam Lescano v. Geico Indem. Ins. Co.*, 24 Fla. L. Weekly Supp. 744a (Broward Cnty. Ct. Nov. 15, 2016); *Auto Glass America LLC, a.a.o. John Rives v. Geico Gen. Ins. Co.*, 26 Fla. L. Weekly Supp. 780a (Broward Cnty. Ct. May 8, 2018); *Auto Glass America LLC, a. a. o. Leslie Regan v. Geico Gen. Ins. Co.*, 26 Fla. L. Weekly Supp. 424a (Broward Cnty. Ct. May 8, 2018); *Auto Glass America, LLC, a.a.o. Clinton Edwards v. Geico Indem. Co.*, 26 Fla. L. Weekly 681a (Broward Cnty. Ct. Sept. 24, 2018); *Glassco, Inc. a.a.o. J.Bazan v. Geico Gen. Ins. Co.*, 28 Fla. L. Weekly Supp. 548a (Hillsborough Cnty. Ct. Aug. 20, 2020), *affirmed*, 343 So.3d 565 (Fla. 2d DCA Aug. 3, 2022).

The *Bazan* case provides an example involving eleven consolidated cases that Glassco won against Geico. On each claim, the court found that Geico “materially breached the insurance policy by paying less than the ‘prevailing competitive price’” and that Geico “did not present any evidence to either establish the ‘prevailing competitive price’ or to rebut the Plaintiff’s establishment of same.” *Id.*, 28 Fla. L. Weekly Supp. 548a, at ¶¶15-17.

In another case involving Glassco, the trial court found that Geico had improperly tampered with evidence by manipulating the data in its windshield claims history spreadsheet. *See, Glassco, Inc., a.a.o. G. Mercado v. Geico Gen. Ins. Co.*, 30 Fla. L. Weekly Supp. 174a (Hillsborough Cnty. Ct. Dec. 17, 2021), *cert. den.*, 345 So.3d 281 (Fla. 2d DCA 2022).

Despite (and because of) these many adverse state court rulings, Geico has resorted to the advice of its “playbook” by filing retaliatory, but meritless, federal “RICO” claims against windshield shops (like Glassco, Shazam, and Auto Glass America) who persistently beat Geico in the state courts, notwithstanding that many of the predicate windshield claims forming the basis for the alleged RICO violations were adversely adjudicated against or contractually settled with Geico, and are, therefore, procedurally barred.

The record indicates that Glassco and Geico settled 53 of the windshield claims involved in this federal lawsuit prior to Geico’s first federal

appeal. (A/13 at 10:10-21); *Government Employees Ins. Co. v. Glassco, Inc.*, 85 F.4<sup>th</sup> 1136, 1139 (11<sup>th</sup> Cir. 2023). Since the filing of this second federal appeal, Glassco and Geico have settled an additional 667 claims involved in this federal lawsuit. (A/113-165). And, besides all of these cases, adjudications, and settlements at both the federal level and in state court, and despite being represented by the same law firm (A/31 at 28:10-15), Geico misrepresented to the federal District Court that there were “NO” related cases pending between the parties in state court, when, in fact, there were more than 1,700 such cases. (DE-12, DE-28). Then, during oral argument before the Eleventh Circuit in this second appeal, Geico concealed that it had, in fact, settled additional claims:

[Judge Hull]: ...So we've got 1,700 of those cases in state court, right? Against you client by glass vendors.

[Counsel for Geico]: There's a lot of them, Your Honor.

[Judge Hull]: ...See, this is what you admit in your brief, so I don't—anyway, 53 of them have been settled and 11 have gone to final judgment. Is that wrong?

[Counsel for Geico]: I think it may be close to that, Your Honor.... I don't have the exact number.

(A/13 at 10:10-24).

Geico's initial representation to the District Court that there were no pending cases between the parties cannot be reconciled with Geico's

concessions in its briefs and during oral argument that there were more than 1,700 pending cases between the parties. Geico's suggestion during oral argument before the Eleventh Circuit that 667 settled cases is "close to" 53 settled cases is misleading and indefensible.

Geico also has paid judgments and voluntarily settled hundreds of other cases not only with Glassco, but with various other repair shops involving the same issues. *See, e.g., Gov't. Employees Ins. Co. v. Auto Glass America, LLC*, M.D.Fla. Case No. 8:18-cv-00856-MSS-JSS (DE-22-1, DE- 22-2, DE-28)(Geico voluntarily settling hundreds of windshield claims in nearly identical federal court action)(A/166-181). Each of those settlements, judgments, original appellate proceedings and appeals is **final**.

In sum, Geico's numerous misrepresentations, concealments, and defeats demonstrate why this Court should disregard Geico's unsupported, false, and irrelevant "Introduction" altogether.

## **STATEMENT OF THE CASE AND FACTS**

### **Nature of the Case**

This case is before the Court under its discretionary jurisdiction (Art. V, §3(b)(6), Fla. Const.) to review the following questions certified by the Eleventh Circuit about the Repair Act”:

(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 of the 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?

The first question requires this Court to determine whether the Repair Act creates a stand-alone cause of action for damages in favor of an insurer, assuming a repair shop violates of the Repair Act in providing services for a customer whose claim is covered by that insurer.

The second question requires this Court to determine whether the Repair Act contains a voiding penalty, rendering all repair shop charges to a customer unenforceable and non-compensable by that customer’s insurer, again assuming a repair shop violates a provision of the Repair Act. The plain text of the Repair Act requires both questions to be answered in the negative.

## Facts

The facts are set out in the Eleventh Circuit's opinion, as follows:

Beginning in 2016, Glassco provided windshield repairs to Florida individuals insured by Geico. Glassco gave a written work order to the insureds, which they signed. Glassco's work order stated the repairs are at "no cost" to the insured. Under Florida law, an insurer, like Geico, is not allowed to charge its insureds a deductible for windshield repairs. Fla. Stat. §627.7288.

In the work order, the insureds assigned to Glassco all rights to insurance payment for windshield repair and/or replacement (collectively "repairs"). The insureds' assignment expressly assigned Glassco the right to make a demand for payment for the repairs and to receive "direct payment" from Geico.

Notably, the assignment also stated, "I hereby authorize the above repairs, *including sublet work*, along with the necessary materials. Glassco, Inc. *and its contractors* may operate my vehicle for the purpose of inspection and delivery at my risk." (emphasis added). Geico's policy granted its insureds the sole discretion to select a repair shop to repair a windshield. Glassco ran its business almost entirely through independent contractors.

Pursuant to the assignment, Glassco made repairs and submitted its invoice to Geico. Geico's policy provided that Geico would reimburse the repair shop for windshield repairs at the "prevailing competitive price" for a "competent and conveniently located" repair shop. Geico relied, in part, on the National Auto Glass Specifications ("NAGS") to determine the "prevailing competitive price." In early 2012, Geico circulated a letter to repair shops, stating that it would only reimburse a deeply discounted amount of NAGS's pricing standards.<sup>5</sup>

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<sup>5</sup> It should be noted that neither the NAGS pricing nor the deeply-discounted reductions imposed by Geico are mentioned anywhere in Geico's insurance policies. See, e.g., *Superior Auto Glass of Tampa Bay, Inc., a.a.o. Jean Fontaine v. Geico Gen. Ins. Co.*, 29 Fla. L. Weekly Supp. 201a, fn. 6

Between 2016 and 2017, 1773 of Geico's insureds selected Glassco to repair their windshields. Glassco completed the repair work, and **this appeal involves no customer complaints**. Yet, for near all of these 1,773 claims, Geico did not pay Glassco's full invoiced price but instead made only deeply discounted payments to Glassco.

In response, Glassco filed small claims actions in Florida state courts to collect the difference between its invoiced prices and the discounted amounts Geico paid. In state small claims court, 11 of the 1,773 cases were consolidated, tried, and resulted in a final judgment for Glassco's invoiced prices against Geico. [citations omitted]. The state small claims court determined that "the prevailing competitive price" is more than the [discounted] amount Geico paid" and that Glassco's "invoiced amount did not exceed the "prevailing competitive price." In so ruling, the state small claims court followed the holding in *Government Employees Ins. Co. v. Superior Auto Glass of Tampa Bay, Inc.*, 26 Fla. L. Weekly Supp. 876a (Fla. Cir. Ct. App. Div. Mar. 17, 2018). The Florida appellate court affirmed those 11 judgments in a summary order. See, *Geico Gen. Ins. Co. v. Glassco, Inc.*, 343 So.3d 565 (Fla. Dist. Ct. App. 2022). Geico settled an additional 53 cases. It appears Glassco's other 1709 cases remain pending in state court.

While these state court actions were pending, Geico brought suit offensively against defendants in federal court.

*Government Employees Ins. Co. v. Glassco, Inc.*, 85 F.4<sup>th</sup> at 1138-39

(emphasis added).

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(Hillsborough County Ct. July 20, 2021). Geico's reliance on such unarticulated limitations of liability to underpay claims is clearly impermissible. See, e.g., *Allstate Ins. Co. v. Orthopedic Specialists*, 212 So.3d 973, 976 (Fla. 2017)("in order for an exclusion or limitation in a policy to be enforceable, the insurer must clearly and unambiguously draft a policy provision to achieve that result").

### Course of Proceedings

Glassco agrees with and adopts the course of the proceedings described by the Eleventh Circuit in *Government Employees Ins. Co. v. Glassco, Inc.*, 85 F.4th at 1139-40.

In addition, at oral argument in this second appeal before the Eleventh Circuit, Geico conceded that if a court determines that the alleged Repair Act violations do not void the repair invoice and preclude Glassco from receiving any payment, all eight counts of Geico's operative complaint fail. (*Id.* at 1140; A/45 at 42:6-20). And, although Geico's counsel denied the need to certify questions to this Court at that oral argument (A/5-8 at 2:24-5:17), following briefing, oral argument, and careful review, the Eleventh Circuit determined it was appropriate to certify the questions of the proper interpretation and scope of the Repair Act and its remedies to this Court.

### **SUMMARY OF THE ARGUMENT**

The Court should answer the certified questions in the negative based on the plain text of the Repair Act. According to the "supremacy-of-text" doctrine embraced by this Court, that plain text must be applied without resort to any legislative intent, purpose, or any other "contractual," "equitable," or "public policy" principles.

The plain language of the remedies provision of the Repair Act only provides causes of action for two classes of plaintiffs: “a customer” who is injured and the “enforcing authority.” Geico is, admittedly, neither. (A/45-46 at 42:22-43:2). Under the supremacy-of-text principle, the Repair Act does not create a private cause of action (or any affirmative defenses) that a customer’s insurer has standing to assert against an allegedly noncompliant repair shop to avoid paying insurance benefits. This is especially true in cases such as this one, where the insurance company has presented no evidence that the customer is injured by, unsatisfied with, or damaged by the repairs performed by the allegedly noncompliant shop.

First, the Repair Act creates a private cause of action for damages only in favor of a “customer,” which is specifically defined by the Repair Act as “the person who signs the written repair estimate.” Second, the remainder of the remedies section of the Repair Act clearly and unambiguously leaves enforcement for violations of the Repair Act to the “enforcing authority,” which is statutorily defined as the “State Attorney” or the “Florida Department of Agriculture.”

Although the Repair Act may be “remedial” and even if it could support a construction that gives the terms “customer” and “enforcing authority” the most expansive meaning to which they are reasonably susceptible, no

reasonable construction of the words “customer” or “enforcing authority” permits Geico—an insurer—to sue as a “customer” or “enforcing authority.”

Obviously, Geico, an “insurer,” which did not sign any work order, select the repair shop, authorize the repairs, or own the vehicle, is not Glassco’s “customer” under the Repair Act. Equally obvious, Geico, an insurer, is not the “enforcing authority.” Section 559.921, therefore, does not create a private cause of action for damages in favor of an insurer. The first certified question is properly answered in the negative.

Likewise, the plain language of the remedies section of the Repair Act does not provide for a voiding penalty as the remedy for violation thereof, even in a statutorily authorized action brought by a customer or the enforcing authority. Indeed, there is no express voiding penalty contained anywhere within the Repair Act.<sup>6</sup> The legislature, as evidenced by various other statutes which contain voiding penalties for violations thereof, knows precisely how to create a voiding penalty as a remedy for a statutory violation, and plainly did not do so in the Repair Act.

Rather, the plain text of the Repair Act, even in an action brought by the enforcing authorities on behalf of customers to address an actual Repair

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<sup>6</sup> Geico’s exhortation that the Repair Act be liberally construed is a tacit admission that the plain text contains no voiding penalty. (IB/40-41).

Act violation, expressly provides that “if 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 award the reasonable value of such repairs.” §559.921(7), Fla. Stat.

In other words, the supremacy-of-text principle prohibits the courts from adding a voiding penalty to the Repair Act which is nowhere found in its plain text. As such, the second certified question must also be answered in the negative. To the extent that the second certified question could be construed as asking whether a customer’s insured can assert an alleged Repair Shop violation as an affirmative defense, the question is overbroad and beyond the scope of the pleadings.

### **STANDARD OF REVIEW**

Appellees agree that this Court reviews certified questions involving statutory interpretation *de novo*.

## **ARGUMENT**

### **I.**

#### **THE SUPREMACY-OF-TEXT PRINCIPLE COMPELS THAT BOTH CERTIFIED QUESTIONS BE ANSWERED IN THE NEGATIVE**

Because both the certified questions presented to this Court and resolution of the appeal pending before the Eleventh Circuit “turn on the interpretation of [the Repair Act]”<sup>7</sup> and because Florida follows the supremacy-of-text principle of interpretation, the Appellees will set out the guiding principle of interpretation first and then apply that principle to the statutory text, which compels negative answers to the certified questions.

### **A.**

#### **Statutory Interpretation**

A court’s determination of the meaning of a statute begins with the language of the statute. *Lopez v. Hall*, 233 So.3d 451, 453 (Fla. 2018). If that language is clear, the statute is given its plain meaning, and the court does not “look behind the statute’s plain meaning for legislative intent or resort to rules of statutory construction.” *State v. Gabriel*, 314 So.3d 1243,

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<sup>7</sup> Geico’s sprawling brief touches upon a wide spectrum of Florida statutes, implicating subjects such as assignments, attorneys’ fees, equitable subrogation, and the insurance contracts. The scope of the pleadings and the certified questions, however, is limited to only one statute, the Repair Act, which was enacted to regulate repair shops, not insurance claims.

1246 (Fla. 2021). A court cannot construe an unambiguous statute in a way which would extend, modify, or limit its express terms or its reasonable and obvious implications. *Casais v. State*, 204 So.3d 969, 970 (Fla. 5<sup>th</sup> DCA 2016).

In interpreting a statute, this Court embraces “the supremacy-of-text principle”—the principle that “[t]he words of a governing text are of paramount concern, and what they convey, in their context, is what the text means.” *Ham v. Portfolio Recovery Associates, LLC*, 308 So.3d 942, 946-947 (Fla. 2020). Under this rule, “every word employed in a legal text is to be expounded in its plain, obvious, and common sense [meaning], unless the context furnishes some ground to control, qualify, or enlarge it.” *Id.* This Court refuses to “add words to a statute in the guise of interpreting it.” *Coates v. R.J. Reynolds Tobacco Company*, 365 So.3d 353, 354 (Fla. 2023). Just as this Court does not “add words” to a legal text, it is not at liberty to “ignore words that were expressly placed there at the time of adoption of the provision.” *Advisory Op. to Governor re Implementation of Amend. 4, the Voting Restoration Amend.*, 288 So.3d 1070, 1080 (Fla. 2020). Simply stated, the Court may not rewrite a statute or ignore words chosen by the legislature so as to modify its terms. *Gabriel*, 314 So.3d at 1248.

This Court “strive[s] to determine the text’s objective meaning through the application of the text to given facts on the basis of how a reasonable reader, fully competent in the language, would have understood the text at the time it was issued.” *Levy v. Levy*, 326 So.3d 678, 682 (Fla. 2021). Statutory terms are viewed in light of the statute’s overall structure and the physical and logical relation of its many parts, which must be read together in order to achieve a consistent whole. *Gabriel*, 314 So.3d at 1249. Context always matters because “sound interpretation requires paying attention to the whole law, not homing in on isolated words or even isolated sections.” *State v. McKenzie*, 331 So.3d 666, 672 (Fla. 2021). Context is important as “a tool for understanding the terms of the law, not an excuse for rewriting them.” *Id.* at 671. Even where a court is convinced that the legislature really meant and intended something not expressed in the statute’s text, it will not depart from the plain meaning of the language which is free from ambiguity. *Forsythe v. Longboat Key Beach Erosion Control Dist.* 604 So.2d 452, 454 (Fla. 1992). Instead of asking this Court to rewrite the Repair Act, Geico should lobby the legislature to do that.

In open defiance of supremacy-of-text principles, beginning on Page 40 of its brief, Geico commences its statutory analysis by asserting that “legislative intent is the polestar that guides a court’s statutory construction

analysis.” (IB/40). As such, from its inception, Geico’s argument is fundamentally flawed, because (1) Geico disregards this Court’s holdings which explain that in reviewing questions of statutory interpretation, the court must first examine the statute’s plain meaning rather than the discernment of legislative intent (as exhorted by Geico);<sup>8</sup> *Lopez*, 233 So.3d at 456; and (2) Geico ignores this Court’s admonition that beginning statutory interpretation with legislative intent can be “misleading” because it “shift[s] the focus of interpretation from the text and its context to extraneous considerations.” *Advisory Op. to Governor*, 288 So.3d at 1078.

Because Geico begins its interpretation of the Repair Act in the wrong place—with legislative intent, instead of the plain statutory language—Geico misleadingly advances (just as this Court warned would follow) an obvious legal fiction—that the Repair Act itself precludes payment to noncompliant repair shops—by reinterpreting, modifying, or ignoring the Repair Act’s plain text. Geico argues that (1) the Repair Act requires liberal construction (I.B/40); (2) the Repair Act sets stringent requirements for compliance (IB/42); and (3) noncompliant repair shops “should” be precluded from

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<sup>8</sup> It should be noted that Geico has failed to provide any authority from which the actual legislative intent relating to the enactment of the Repair Act is discernible. Accordingly, even if legislative intent were to be considered the “polestar” guiding statutory analysis of the Repair Act, Geico’s unsupported assertions relating to legislative intent must be disregarded.

recovering payment for their services due to contract enforcement principles and equitable principles (IB/53-54).

Geico principally relies on decisions issued before this Court's enforcement of the supremacy-of-text principle in *Advisory Op. to Governor*, 288 So.3d at 1078. In that decision, this Court retreated from earlier decisions "which suggested that the first step in construing a constitutional provision may involve something other than determining the objective meaning of the text," such as looking to legislative intent to determine the meaning of the statute. *Id.* Based on a supremacy-of-text analysis, Geico's arguments are ineffectual. Geico disregards the Repair Act's text and structure exhorts this Court to do exactly what it said it cannot do—to "shift the focus of interpretation from the text and its context to extraneous considerations." *Id.*

Accepting Geico's approach would accomplish that inappropriate result. Rather than discerning meaning from the enacted text of the Repair Act, Geico implores this Court to apply external considerations (such as unsubstantiated legislative intent, public policy, equitable considerations, etc.) in order to justify its strained and unsupportable alternative meaning. But such considerations are not recognized bases to reinterpret the plain text

of a statute. And equitable principles (such as equitable subrogation) do not apply to interpretation of statutory text.

Even if public policy considerations were to warrant a different result from application of the statutory text (as Geico implicitly exhorts), Geico's gratuitous policy-related arguments (which are extrinsic to the record), concerning "perverse" attorneys' fees incentives and a perceived (by Geico) litigation crisis (IB/23-27) do not provide any proper basis for a reinterpretation of statutory text. The text, which is supreme, trumps Geico's concerns, which should be directed to the legislature.

Geico's arguments cannot be reconciled with the supremacy-of-text principle. Geico improperly implores the Court to convert an "insurer" into a Repair Act "customer" and urges the transmogrification of a statute which covers automotive repairs into one which would invalidate or render illusory coverage that Geico's insurance policies promise to provide.

## **B.**

### **Geico is not a Repair Act "customer"**

The Repair Act creates a private right of action only in favor of an injured customer. Section 559.921(1) states that "[a]ny **customer injured** by a violation of [the Repair Act] may bring an action in the appropriate court for relief." (Emphasis added). Section 559.921 entitles a "customer" who is

“injured” to recover “damages plus court costs and reasonable attorney’s fees” as well as “injunctive relief.”

In pertinent part, Section 559.903(1) defines “customer” to mean “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.” §559.903(1), Fla. Stat. Because the undisputed record establishes that Geico’s insureds were Glassco’s customers who authorized the work and signed the “zero charge to the customer” work orders, the District Court rightfully concluded “the insureds who signed [Glassco’s] repair estimates are **customers** under the Repair Act.” (DE-148 at 21). As noted by the District Court,

[a]lthough the Repair Act is ‘remedial’ and warrants a construction that ‘give[s] the terms used the most extensive meaning to which they are reasonably susceptible,’ (internal citation omitted), no reasonable construction permits GEICO—an insurer—to sue as a ‘customer’ under the Repair Act.

*Government Employees Ins. Co. v. Glassco, Inc.*, 2020 WL 13358054, at \*4 (M.D.Fla. 2020); DE-59 at 16. See also *Allstate Ins. Co. v. Auto Glass America, LLC*, 418 F.Supp.3d 1009, 1025 (M.D.Fla. 2019) (“[Allstate is] not the customer[], per the statutory definition. Thus, [Allstate] is not covered by [the Repair Act.]”).

Under the plain language of the Repair Act, Geico is not a “customer” entitled to bring a cause of action under Section 559.921(1). Moreover, in this case, Geico has not presented any evidence that any “customer” was “injured by a violation.” Either way, Section 559.921(1) provides Geico with no standing to “bring an action...for relief.”

1.

There is no case authority which would plausibly extend the statutory definition of “customer” to include a customer’s insurer.

Even if resort to case authority were required to properly interpret the plain text of the Repair Act (which it is not), Geico’s proclamation throughout its brief that the Repair Act’s remedies extend equally to “non-customers,” such as insurers, is meritless. (IB/49).

Consistent with the supremacy-of-text doctrine, when a legislative act defines words used in a statute, the statutory definition, when so declared, is controlling and takes precedence over and against all other definitions. *Greenleaf & Crosby Co. v. Coleman*, 158 So. 421, 427 (Fla. 1934); *Ervin v. Capital Weekly Post, Inc.*, 97 So.2d 464, 469 (Fla. 1957). Throughout the initial brief, Geico implicitly recognizes that the Repair Act defines “customer” to mean “the person who signs the written repair estimate,” and that Geico, the customer’s insurer, does not fall within this definition. Nevertheless, Geico relies on *1616 Sunrise Motors, Inc. v. A-Leet Leasing of Florida*, 547

So.2d 267 (Fla. 4<sup>th</sup> DCA 1989) as purported authority for the overreaching proposition that the courts can ignore the statutory definition, because the remedial nature of the Repair Act supposedly allows for a private cause of action in favor of a “noncustomer.” (IB/49). The Repair Act text clearly does not allow that, and neither does *Sunrise Motors*.

In *Sunrise Motors*, the repair shop sold a vehicle to a commercial lessor, who in turn leased it to a lessee. When the lessee was involved in an auto accident, the shop repaired the vehicle without obtaining the lessee’s written or oral authorization. The lessee failed to respond to the shop’s requests to pick up the vehicle and pay for the repairs, prompting the shop to send the owner/lessor of the vehicle a notice that it was going to sell the vehicle to satisfy its mechanic’s lien pursuant to Ch. 713, Fla. Stat. Pursuant to §559.917, Fla. Stat., the owner/lessor filed a bond, which transferred the possessory lien to the bond, in order to secure release of the vehicle. The shop then filed a claim against the owner/lessor’s bond. However, the trial court denied recovery to the shop on the grounds that it was not substantially compliant with the Repair Act and could not enforce its lien against the bond. The Fourth District affirmed.

Geico’s notion that the holding of *Sunrise Motors* authorizes a “non-customer” to bring a cause of action under the Repair Act is fatuous. Geico’s

interpretation is nowhere to be found or gleaned from the holding itself. Principally, in *Sunrise Motors*, the plaintiff repair shop brought the applicable claim against a bond, not the customer/lessee. Section 559.517(1)(b) specifically authorizes a repair shop/lienor to “file suit to recover the bond.” And so, the Repair Act specifically authorized the suit on the bond by the repair shop, whereas nothing in *Sunrise Motors* authorizes a customer’s insurer to bring a private action for damages under Section 559.921—the section of the Repair Act this Court is tasked with interpreting.<sup>9</sup> Accordingly, *Sunrise Motors* offers no support to Geico’s quest to transform a customer’s insurer into a customer.

Subsequent decisions from Florida’s Fourth District Court of Appeal clearly demonstrate that Geico misreads *Sunrise Motors*. In *American Atlantic Transmission v. Nice Car, Inc.*, 112 So.3d 639 (Fla. 4th DCA 2013), a decision not addressed by Geico’s brief, that court clarified that only a “customer” could post a bond under the lien provisions of the Repair Act. *Nice Car* held that a lienholder who was neither the customer nor the vehicle owner was not entitled to obtain possession of the vehicle by posting a bond.

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<sup>9</sup> As duly noted by Judge Hull during Eleventh Circuit oral argument, “all [*Sunrise Motors*] said, the [non-compliant] repair shop couldn’t enforce the lien for repairs by refusing to return the vehicle to the customer. That’s all it held... *Sunrise* [] deals with a different lien statute. It deals with a different customer statute. It’s wholly unhelpful here.” (A/11 at 8:7-25).

*Nice Car* expressly rejected the proposition that *Sunrise Motors* allows any “non-customer” who posts a bond to obtain possession of the vehicle against the interest of a non-compliant repair shop. Instead, the Fourth District explained, “[h]ad the legislature intended to define ‘customer’ to include ‘any person claiming an interest in or lien,’ it would have done so.” *Id.* at 642. In short, *Nice Car* rejected the reading of *Sunrise Motors* that Geico promotes in this appeal. Thus, Geico’s expansive application of the remedial provisions of the Repair Act to create a right of redress for, literally “anyone,” based on the holding of *Sunrise Motors*, is meritless, as is Geico’s contention that *Sunrise Motors* is precedential. In fact, the *Nice Car* decision held that *Sunrise Motors* has “no precedential value.”

Accordingly, both Judge Merryday’s Order (on Motions to Dismiss) (DE-59) and Judge Mizelle’s Order (on Motions for Summary Judgment) (DE-148) correctly hold that *Sunrise Motors* does nothing to advance Geico’s desire to be treated like a Repair Act “customer.” Under no reasonable construction of the Repair Act could Geico ever be considered Glassco’s “customer” for purposes of entitlement to the remedies afforded by §559.921.

## 2.

Geico’s arguments to construe the term “customer” in a way which would extend or modify that term beyond its obvious or reasonable limits violate supremacy-of-text

Resisting the plain text of the Repair Act's statutory definition of the word "customer," Geico argues that because Glassco never provided any customer with a written estimate, no customer could ever sue Glassco for the failure to provide an estimate under the Repair Act, because (1) Section 559.903(1) defines a customer to mean "the person who signs the repair estimate," and (2) Section 559.905 requires a repair shop to provide a written estimate to "any customer." In other words, Geico argues that a "customer" under the Repair Act cannot mean what the legislature defined it to mean, because "no one" would ever become a "customer" where a Repair Shop either did not, or was not statutorily required to, provide a written estimate to the customer for signature. (IB/57). Geico asserts that this cannot be the law. From there, Geico posits that such an interpretation allows a repair shop to violate the law without consequence. (IB/57).

This argument is meritless. If this Court could invalidate or simply ignore the statutory definition of "customer," this Court would then "look to contemporaneous dictionaries for evidence of that meaning." *Tsuji v. Fleet*, 366 So.3d 1020, 1028 (Fla. 2023). There is no generally accepted dictionary definition for the word "customer" that includes the customer's insurer.

Geico's suggestion that a repair shop can violate the Repair Act without consequence is belied by the fact that, under Section 559.921, the

“enforcing authority,” can suspend a noncompliant shop’s registration, fine, or otherwise penalize Glassco. But, again, just as Geico is not a “customer,” Geico is also not the “enforcing authority.” The enforcing authority’s ability to impose a civil penalty, including a fine, enjoin certain activity, or revoke the shop’s registration under the Repair Act, serves to “confirm,” for purposes of statutory interpretation, that the exclusion of the customer’s insurer from the statutory definition of “customer” does not allow a repair shop to violate the Repair Act without consequence.

As the District Court explained in rejecting this precise argument, even if Geico has identified a “hole” in Section 559.903(1)’s definition of “customer,” “this hole is not an opening for Geico—an insurer—to claim the status of a ‘customer’ under the Repair Act remedies section in Section 559.921(1).” (DE-59 at 10). Under no circumstances can the plain text of the Repair Act be fairly read in context to mean that a customer’s insurer is a “customer” or has any standing to assert a claim or affirmative defense under the Repair Act.

Second, Section 559.905 is a separate section of the Repair Act addressing when a repair shop must provide a written estimate, which must also be read as a whole and in context to determine its fair meaning. The plain language of Section 559.905(1) provides that “[w]hen any customer

requests a motor vehicle repair shop to perform repair work on a motor vehicle, the cost of which repair work will exceed \$100 to the customer,” then, and only then, must the repair shop prepare an estimate. Section 559.905(3) also explains that a customer can “waive[] in writing her or his right to receive a written estimate.” Geico’s argument that no customer could ever sue is based on a selective and out-of-context reading of the statute.

In rejecting Geico’s argument, the District Court explained that the word “customer” in Section 559.905—as in Sections 559.903 and 559.921—also permits only one reasonable interpretation when read *in pari materia* with the other parts of the statute as a whole, to wit: a “customer” is the person who “requests a motor vehicle repair shop to perform repair work on a motor vehicle.” (DE-59 at 10). Again, because Geico did not “request” Glassco to perform repair work for purposes of Section 559.905, and because Geico is not the person “who signed the repair estimate” for purposes of Section 559.903, Geico is not a “customer” under either statute for purposes of the remedies provided by Section 559.921, which only creates a cause of action for a “customer” who is “injured by a violation.”

Under the undisputed facts of this case applied to the plain text of the Repair Act, Geico’s insureds were the Repair Act “customers,” and if they were “injured by a violation,” they would be the only ones entitled to sue

under Section 559.921's cause of action for customers, because it was those insureds who owned the vehicles, "requested" Glassco to perform repairs, signed the work orders, and authorized the repairs. And so, it is not that the Repair Act remedies provision is rendered "meaningless," as Geico asserts. (IB/57). Rather, the Repair Act's text is given its ordinary, plain, obvious, and commonsense meaning—the customer's insurer is not the customer, but rather the insured is the customer. The District Court correctly refused to construe the unambiguous statutory term "customer" in a way which would extend, modify, or limit its express meaning or its reasonable and obvious implications, to include the customer's insurer, who had no privity in the repair transaction.

To make its argument that an insurer should be treated like a Repair Act customer, Geico also belabors the point that no "customer" ever received a "written estimate." (IB/56). Geico erroneously states that Glassco "fail[ed] to provide any written estimates, to anyone." (IB/56). But that is not true. "Glassco gave a written work order to the insureds, which they signed." And those work orders "stated the repairs are at 'no cost' to the insured." *Government Employees Ins. Co. v. Glassco, Inc.*, 85 F.4<sup>th</sup> at 1338. This simply confirms that Geico's statutory interpretation argument is flawed, because it demonstrates conclusively that Geico is actually ignoring the

undisputed facts of this case applied to the plain text of Section 559.905(1) in pressing its improper strained interpretations of the statute. On top of that, Geico has not presented any evidence that any of Glassco's insured customers were "injured by a violation."

As noted above, the plain text of Section 559.905(1) only requires a written estimate to be provided to the customer when the cost of repairs exceed "**\$100 to the customer.**" In this case, it is undisputed that no repair ever exceeded the cost of \$100 *to the customer*. In fact, every repair was at "zero cost" **to the customer**. Therefore, the plain language of Section 559.905 did not require Glassco to provide a written estimate to the customer. Putting aside that Geico's allegations relating to Glassco's "failure" to provide written estimates are false and unable even to demonstrate a "technical" Repair Act violation, the point here is that Geico's argument for its preferred statutory interpretation violates the basic principles of statutory construction. This is because Geico ubiquitously asserts that Glassco violated the written estimate provisions of the Repair Act, when the plain text of Section 559.905 does not require a written estimate if the charges "to the customer" will not exceed \$100.

To summarize, by arguing that the first certified question should be answered in the affirmative, Geico is essentially asking this Court to excise

the words “to the customer” from the plain text of Section 559.905 and to ignore the undisputed fact that no customer was ever charged a penny or in any way injured. It goes without saying that no rule of statutory interpretation can permit such an excision of a materially dispositive portion of the statutory text.

Geico absurdly argues that the District Court construed the Repair Act so that “no one would ever have legal standing to seek redress” (IB/58). Rather, the District Court correctly construed the Repair Act to be limited to actual “customers.” Such customers obviously have standing to seek redress under the Repair Act. Geico is plainly not a “customer” under any fair reading of the Repair Act. The reason why none of Glassco’s “customers” have sued under the Repair Act in this case is equally obvious. Surely, it has nothing to do with the fact that the Repair Act had been construed to lock them out of court. Rather, in this case, for each of the 1,773 Geico’s insureds, “Glassco **completed** the repair work, and this appeal **involves no customer complaints**.”<sup>10</sup> *Government Employees Ins. Co. v. Glassco, Inc.*, 85 F.4<sup>th</sup> at

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<sup>10</sup> For this reason, Geico’s emphasis on the “remedial purpose” of the Repair Act (to protect an undiscerning public from deceptive and fraudulent practices of “errant” repair shops) in support of its argument that public policy and/or equity dictates that Glassco’s charges be voided, is a red herring as applied to Glassco. The undisputed record establishes (despite Geico’s ubiquitous and unproven *ad hominem* depiction of Glassco’s business practices) that Glassco’s customers all got exactly what they bargained for—

1138. In other words, Geico was unable to find a single customer who was “injured” by any Repair Act violation supposedly committed by Glassco, as required by the plain text of Section 559.921 as a material element of a Repair Act action. Accordingly, Geico is inviting this Court to rewrite the Repair Act to allow insurance companies to avoid covering repair work with which the insurer customer is satisfied.

The correctness of the District Court’s statutory interpretation of the Repair Act as it relates to the first certified question is underscored by recent 2023 amendments to the Repair Act. In those amendments, the legislature amended the Repair Act to include new and amended definitions, and new provisions applicable to windshield shops, but left the definition of “customer” unchanged. See, Ch. 2023-136, Laws of Fla. “[T]he legislature is presumed to know the existing law when a statute is enacted, including ‘judicial decisions on the subject concerning which it subsequently enacts a statute.’” *Crescent Miami Ctr., LLC v. Florida Dept. of Rev.*, 903 So.2d 913, 918 (Fla. 2005). Furthermore, “the legislature is presumed to have adopted prior judicial constructions of a law unless a contrary intention is expressed in the new version.” *City of Hollywood v. Lombardi*, 770 So.2d 1196, 1202 (Fla.

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they fully understood the transaction, approved it, received a new windshield for no charge to them, and in each case the replacement was satisfactorily performed.

2000). Thus, as explained in *Nice Car*, if the legislature had intended to define “customer” to include the customer’s insurer, or wanted to give insurers any causes of action, defenses, or other remedies under the Repair Act, it would have done so in this 2023 legislation in response to the numerous previously cited decisions at pages 4-5 above, which uniformly hold that a customer’s insurer has no rights under the Repair Act.

Geico’s final argument on the first certified question contends that the Repair Act should be interpreted to give Geico the right to sue under the Repair Act once Geico “paid” Glassco’s claims. (IB/60-61). While this argument is a bit difficult to follow, it appears to suggest that the plain text of the Repair Act should be expanded to authorize a private cause of action when an insurer which pays its insured’s claim. Again, this argument violates the supremacy-of-text doctrine.

Nowhere does the Repair Act equate the customer with an insurer who paid the repair claim. A fair reading of the Repair Act actually demonstrates the opposite. Section 559.920(10), for example, provides that it is a violation of the Repair Act to substitute used, rebuilt, salvaged or straightened parts for new replacement parts without notice to the “motor vehicle owner” and to her or 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.” And so, the plain text of the Repair Act specifically contemplates that certain repairs are to be paid for by an insurer; thus, it cannot be fairly read to convert the customer’s insurer into a “customer” simply because the insurer was obligated under an insurance policy to pay a claim. As a matter of statutory interpretation, Geico’s argument that it should be considered the equivalent of a Repair Act customer is specious. *See, Burton v. Oates*, 362 So.3d 311 (Fla. 5<sup>th</sup> DCA 2023)(supremacy-of-text principle does not permit supervisor of elections to be considered “equivalent” of clerk of municipality under municipal recall statute). Moreover, there is no allegation or evidence that any of Glassco’s customers ever received a used, rebuilt, salvaged, or straightened windshield, or that Glassco violated a Repair Act statute which require Glassco to provide such notice to the customer’s insurer.

If Geico’s citation to *Fayad v. Clarendon Nat’l Ins. Co.*, 899 So.2d 1082 (Fla. 2005) is intended to advance an undeveloped (and unpled) theory of equitable subrogation, its reliance on *Fayed* is entirely unavailing. (IB/61). First, it is improper to rely on equitable principles to interpret a statute. Moreover, Geico was free to bring a common law claim of equitable subrogation in addition to its Repair Act claims, but did not. Just as the Repair Act does not limit a customer’s common law remedies, it does not

limit (or otherwise affect) an insurer's common law subrogation rights. Regardless, that in no way equates an "insurer" with a "customer" under the Repair Act. Principles of equitable subrogation—in which an insurer is substituted for its insured—simply cannot be used to either expand or limit the plain textual meaning of the word "customer" as used in the Repair Act. To do so would violate the most rudimentary precepts of statutory construction. *Gabriel*, 314 So.3d at 1248.

Neither can the Repair Act be fairly read to create a "statutory subrogation" remedy for an insurer which pays a claim. There are many instances wherein the legislature creates just such a remedy, but it did not do so in the Repair Act. *Peoples Gas System v. Posen Construction*, 322 So.2d 604, 606 (Fla. 2021).

This Court should therefore reject Geico's invitation to either "rewrite the statute or ignore the words chosen by the Legislature so as to expand" the plain text of the Repair Act. *Gabriel*, 314 So.3d at 1248.

### C.

#### **The Repair Act does not contain a voiding penalty.**

To answer the second certified question in the positive as Geico urges, the Repair Act must be read to contain a voiding penalty which would disentitle Glassco from receiving **any** compensation for services rendered if

Glassco violated any singular provision of the Repair Act.<sup>11</sup> Because the plain language of the Repair Act clearly does not contain such a voiding penalty, Geico attempts to invent one relying upon inapplicable case law. In so doing, Geico misreads and misconstrues both the Repair Act and the case law on which it relies.

Unlike many other statutes,<sup>12</sup> the Repair Act contains no provision which would entitle Geico to disgorgement or recoupment of monies already paid to Glassco, or a new affirmative defense to avoid paying a claim, based on Glassco's alleged "pervasive violations." This fact was duly noted by the Judge Merryday in his order on the Appellees' motions to dismiss:

Unlike other statutes in Florida governing professional services, the Repair Act contains no provision voiding a reimbursement claim submitted by a non-compliant repair shop. For example, the Health Care Clinic Act, Section 400.9935, Florida Statutes, imposes a licensing requirement for healthcare clinics and states that "[a] charge or reimbursement claim made by or on behalf of a clinic that is required to be licensed . . . is an unlawful charge and is noncompensable and unenforceable. Other

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<sup>11</sup> "[A] statutory violation renders contracts unenforceable only where the statute expressly or impliedly so provides." *Buell v. Direct Gen. Ins. Agency*, 267 Fed. Appx. 907, 910 (11<sup>th</sup> Cir. 2008); see also *Cross v. Point and Pay, LLC*, 274 F.Supp.3d 1289 (M.D.Fla. 2017); *Hucke v. Kubra Data Transfer Ltd., Corp.*, 160 F.Supp.3d 1320 (S.D.Fla. 2015).

<sup>12</sup> See, e.g., §§ 673.3051 (defenses and claims in recoupment); 679.340 (right of recoupment or set-off against deposit account); 831.032(3)(d) (disgorgement of profits for forging or counterfeiting private labels); 870.07 (affirmative defense in civil action for damages resulting from riot), Fla. Stat.

statutes in Florida contain similar voiding provisions, and “the fact that the Florida legislature ‘chose to impose’ such a remedy in certain circumstances but not others ‘indicates a deliberate [legislative] choice with which the courts should not interfere.’” *State Farm Mut. Automobile Ins. Co. v. Performance Orthopaedics & Neurosurgery, LLC*, 278 F.Supp.3d 1307, 1330 (S.D. Fla. 2017) (Moore, C.J.)

(DE-59 at 16-17). As further noted by Judge Merryday, “Geico cites no provision in the Repair Act voiding a reimbursement claim submitted by a non-compliant repair shop,” *id.*, and there is none.

From inception, Geico has staked this entire lawsuit on brazen misrepresentations of the plain language of the Repair Act. Applying the rules of statutory interpretation, the fact that a voiding penalty is not included in the Repair Act answers the question. “*Expressio unius est exclusio alterius.*” *Alachua Cnty. v. Watson*, 333 So.3d 162, 171 (Fla. 2022)

Consistent with the supremacy-of-text and the *expressio unius* doctrines, the courts cannot construe or rewrite the Repair Act to create remedies, defenses, or other consequences that are not plainly stated therein. See, e.g., *QBE Ins. Corp. v. Chalfonte Condo. Apt. Ass’n*, 94 So.3d 541, 550 (Fla. 2012) (“The plain language of the statute does not provide for either a private cause of action or a penalty for a violation of its requirements.”); *Id.*, 94 So.3d at 553 (“courts cannot provide a remedy when the Legislature has failed to do so”); *Dascott v. Palm Beach Cnty.*, 988 So.2d

47, 49 (Fla. 4th DCA 2008) (“we construe the Sunshine Act to limit the remedies to those specifically enumerated therein” and plaintiff may not recover relief not provided for by the Act).

Simply stated, “the Florida statutes are filled with duties and requirements unaccompanied by penalties or consequences for noncompliance” and “courts are not at liberty to manufacture one.” *Fla. Med. & Inj. Ctr., Inc. v. Progressive Express Ins. Co.*, 29 So.3d 329, 341 (Fla. 5th DCA 2010).

When the Legislature wants to impose consequences for alleged violations of a statute, it knows how to do that. For example, in *Chalfonte*, this Court considered whether to void a hurricane deductible because the insurer did not comply with statutory notice requirements. In rejecting that argument, the Court noted that the legislature “included penalties in many other sections of the Insurance Code, which expressly state that a violation of the statute would render the policy provision invalid or void” or “crafted specific remedies for an insurance company's noncompliance with a statutory requirement.” *Id.*, 94 So.3d at 552. Likewise, there is no provision of the Repair Act stating that a customer’s insurer does not have to pay anything to allegedly non-compliant repair shop who satisfactorily performs repairs that are admittedly covered by the customer’s insurance policy.

1.

The Repair Act expressly contemplates that a noncompliant Repair Shop may be awarded the reasonable value of its services.

In sharp contrast to Geico's desire to create a voiding provision out of whole cloth, Geico eschews reference to the controlling language of the Repair Act which expressly contradicts (and thus nullifies) Geico's entire premise. Specifically, the remedies provision of the Repair Act, which is the section under which Geico sued the Appellees, provides, in pertinent part:

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.**

§559.921(7), Fla. Stat. (emphasis added). With this language, the Repair Act does **not** provide a voiding penalty for a violation of the Repair Act. Instead, it specifically **does** contemplate a *quantum meruit* award to a noncompliant repair shop. Under the plain language of the statute, a noncompliant repair shop obviously does not absolutely forfeit the right to compensation, even assuming Geico is an "injured" "customer" entitled to bring a cause of action under the Repair Act (which it is not). Because Geico entirely overlooks this important statutory provision, Geico's sweeping assertion that a noncompliant repair shop has no right to

compensation, even in *quantum meruit*, is contrary to the plain language of the Repair Act's itself.<sup>13</sup>

2.

To avoid the plain language of the Repair Act, Geico turns instead to inapposite case authority, which it also misreads.

Since the Repair Act does not contain a voiding penalty, Geico looks to inapposite case authority to create one. In doing so, Geico discards the supremacy-of-text principle, ignores this Court's controlling precedent, and misreads other case authority.

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<sup>13</sup> Even if the absence of an express voiding penalty in the Repair Act and the clear text of Section 559.921(7) does not conclusively confirm that the Repair Act does not void an invoice to an insurer from a noncompliant repair shop, there is other insurmountable text-based evidence in various other sections of the Repair Act, when read as a unified whole, that oblige this same conclusion. For example, Section 559.909(3) provides for customer liability for non-estimated repair shop charges of "\$10 or 10 per cent, whichever is greater, but not to exceed \$50, unless the motor vehicle repair shop has obtained authorization to exceed the written estimate." Thus, even where a repair shop charges for repairs which exceed the authorized estimate, the Repair Act contemplates that the customer will still retain *some* liability for the un-estimated charges. Because this appeal turns on interpretation of whether the plain language of Repair Act contains a voiding penalty, Section 559.909(3) thus further reinforces the notion that the plain language of the Repair Act contemplates that the customer retains *some* liability for charges of a non-compliant Repair Shop, which vitiates Geico's erroneous assertion that a non-compliant repair shop cannot collect anything on its charges. Accordingly, under the supremacy-of-the-text rule which exclusively governs the question of whether the Repair Act contains a voiding penalty, "some" liability cannot reasonably mean "no" liability.

This Court, for example, has rejected the notion that a statute created an essentially strict-liability “statutory indemnity” remedy—similar to a voiding penalty urged by Geico, here—where the statute did not plainly and clearly do so. *Peoples Gas*, 322 So.3d 604 (while statute did create stand-alone negligence-based cause of action, it did not create a cause of action for “statutory indemnity.”). Notwithstanding this reality, Geico’s brief relies nearly entirely on *Sunrise Motors* as a *leitmotif* for the misguided proposition that a repair shop which violates the Repair Act is prohibited from recovering its charges. (IB/19-23, 47-53). Besides being emasculated by *Nice Car* and being factually distinguishable, *Sunrise Motors* was issued in 1989, four years preceding the legislature’s 1993 amendment to the Repair Act that specifically added §559.921(7). See, Ch. 93-219, Laws of Fla. Thus, to adopt Geico’s interpretation would be to nullify that portion of the Repair Act that was specifically enacted to obviate any ambiguity created in the face of those prior authorities upon which Geico exclusively relies, such as *Sunrise Motors*, *Osteen v. Morris*, 481 So.2d 1287 (Fla. 5<sup>th</sup> DCA 1986), and *Gonzalez v. Tremont Body & Towing, Inc.*, 483 So.2d 503 (Fla. 3d DCA 1986). Geico’s effort to disregard the impact of the 1993 enactment of §559.921(7) should not be countenanced. See *State v. Goode*, 830 So.2d 817, 824 (Fla.

2002)(“the legislature does not intend to enact useless provisions, and courts should avoid reading that would render part of a statute meaningless”).

3.

Geico conflates the lien provisions of the Repair Act with the remedies provisions to read a voiding penalty into the Repair Act

Section 559.919, Fla. Stat. provides that “[n]o motor vehicle repair shop...may enforce...a [possessory] lien...if it has failed to substantially comply with the provisions of this part.” Significantly, Geico’s lawsuit does not involve (i) the discharge of a possessory lien by a customer, (ii) a claim where Glassco retained a customer’s vehicle because of an unpaid repair invoice, or (iii) a situation in which Glassco is attempting to enforce a Chapter 713 lien over any motor vehicle. Rather, this case involves an insurance company’s attempt to recoup insurance benefits paid to Glassco that Geico promised its insureds it would pay under their insurance policies.

To fully understand the weakness of Geico’s argument contextually, it is essential to note that *Sunrise Motors* involves a repair shop’s claim to enforce a possessory lien, which is governed by the bond and lien provisions of §559.917, Fla. Stat., not the remedies provision of the statute. Plainly, Chapter 713 creates a right to a possessory lien in favor of a repair shop and §559.917 sets out a procedure in which a customer can transfer that possessory lien to a bond to regain possession of the vehicle.

First, Geico, an insurer, is not a repair shop with a lien right. Even if Geico were able to establish that it could post a bond (which, as a non-customer, it cannot under *Nice Car*), the lien provisions of the Repair Act still cannot be read to establish any right for Geico to recover its payments. Thus, to the extent that Geico relies on *Sunrise Motors* to argue that a noncompliant repair shop cannot collect anything for its repairs and that an insurer (as a non-customer) can recoup its payments, *Sunrise Motors* is “wholly unhelpful.” (A/11 at 8:7-25).

The distinction between an action by an insurer against a repair shop for disgorgement of amounts paid for windshield replacements based on alleged violations of the Repair Act and the factual circumstances considered in *Sunrise Motors* was clearly recognized by another Middle District of Florida decision:

The appellate court in [*Sunrise Motors*] declined to allow a repair shop to enforce its lien against the owner of the vehicle at issue, who was not a customer of the shop. But [the Repair Act] expressly provides that a repair shop who has violated [the Repair Act] may not enforce its lien for repairs by refusing to return the vehicle to the customer or “in any other fashion.” §559.919, Fla. Stat. [The repair shop] is not attempting to enforce a lien and [*Sunrise Motors*] is therefore of no help to State Farm.

*State Farm Mut. Auto. Ins. Co.v. At Home Auto Glass, LLC*, 2021 WL 6118102, at \*5, fn. 4 (M.D.Fla. Dec. 27, 2021).

In the final analysis, all *Sunrise Motors* confirms is that when **a repair shop** brings a §559.917 action *to enforce a lien*, the repair shop cannot enforce its possessory lien if the shop is not in substantial compliance with the Repair Act. Glassco has never claimed a possessory lien or retained any customer's vehicle. The lien provisions of the Repair Act are completely inapplicable in context. *Siam Motors, Inc. v. Spivey*, 136 So.3d 692, 694 (Fla. 2d DCA 2014) (§559.917, Fla. Stat., deals with bonds to release possessory liens claimed under part II of Chapter 713 and because the shop did not retain possession of the customer's car and did not claim a lien, the Repair Act lien provisions are inapplicable).

4.

There is no case authority which would plausibly read a voiding penalty into the Repair Act.

In support of its assertion that Florida District Courts of Appeal have held that repair shops that violate the Repair Act may not collect on their charges, even in *quantum meruit*, Geico relies on *Sunrise Motors*; *Osteen*, 481 So.2d 1287; *Gonzalez*, 483 So.2d 503 (Fla. 3d DCA 1986); *Safari Tours, Inc. v. Pasco*, 255 So.3d 415 (Fla. 3d DCA 2018) and *Perez-Priego v. Bayside Carburetor & Ignition Corp.*, 633 So.2d 1190 (Fla. 5th DCA 1994). Each of these cases stands for the proposition that a repair shop cannot either enforce any lien rights or recover on the bond if the shop is not in

“substantial compliance” with the Repair Act. See Osteeen (involving a lien action brought by the repair shop); *Safari* (same); *Gonzalez*, (involving a repair shop’s failure to return a customer’s vehicle). These cases are inapposite because Glassco has not attempted to enforce any lien against any customer or refused to return any vehicle to a customer. While Glassco may not be able to enforce its lien in *quantum meruit* if it is not in substantial compliance with the Repair Act under §559.919, that hardly means that Glassco’s claim as an assignee of the insured for reimbursement for completed repairs from an insurance company is “void,” “non-reimbursable,” or that Glassco is “ineligible” to receive those benefits in the first instance, as Geico asserts.

In order to bring any semblance of a “voiding penalty” into play, Geico implicitly would need to assume that this case implicates the lien provisions of the Repair Act, which it does not. And, even if Geico’s claims were governed by the lien provisions, in order for Glassco to file suit under the lien provisions to maintain a cause of action under that section, Geico would be strictly required to first post a bond. See §559.917(4), Fla. Stat. In this case, just as Glassco is not enforcing a lien, neither Geico, nor anyone else, has posted a bond.

Further, even if the lien provisions of the Repair Act were to apply to the facts *sub judice*, Geico's brief disregards state appellate cases which are discordant with Geico's view. After all, even the Repair Act itself permits a repair shop in "substantial compliance" with the Repair Act to enforce its lien. Thus, even in the context of its lien provisions, the Repair Act does not contain an absolute voiding penalty, because if a repair shop is in substantial compliance, it is not prohibited from enforcing its lien under the Repair Act. The lien provision's "substantial compliance" language clearly implies no voiding penalty.

In *Lieberman v. Collision Specialists, Inc.*, 526 So.2d 102, 103 (Fla. 4<sup>th</sup> DCA 1987), the Fourth District affirmed a judgment in favor of a repair shop in a "lien" action under the Repair Act, and held that the repair shop was "substantially compliant" with the Repair Act where the repair shop prepared no written estimate, but instead relied on an estimate prepared by the customer's insurer. Not only does *Lieberman* demonstrate the obvious distinction between a customer's insurer and the repair shop's customer defeating the idea that Geico is a "customer" here, but it also undermines any notion of the Repair Act containing a voiding penalty. Although the repair shop in *Lieberman* did not provide an estimate to its customer, the shop was still held to be in "substantial compliance" with the lien provision so that it

could enforce its lien. Existing precedent confirms that a repair shop retains entitlement to enforce a possessory lien and collect on its charges even if the shop is not fully compliant with the technical provisions of the Repair Act. Thus, *Lieberman* negates the idea that the Repair Act contains a voiding penalty.

Similarly, in *KT's Kar Kare, Inc. v. Laing*, 617 So.2d 325, 326 (Fla. 4<sup>th</sup> DCA 1993), the Fourth District reversed a judgment in favor of a customer under the Repair Act against a repair shop, and held that the repair shop's "handwritten note" was in "substantial compliance" with the Repair Act, notwithstanding its failure to comply with all of the technicalities of the Repair Act's written estimate provisions, including the failure to provide an opportunity to waive the written estimate and the failure to make reference on the estimate that the costs would exceed any estimates. Due to the repair shop's "substantial compliance," it was allowed to enforce its lien in *quantum meruit*.

*Lieberman* and *KT's Kar* are examples of District Courts of Appeal decisions which expressly contradict Geico's argument that the District Courts of Appeal have issued controlling precedent finding that a noncompliant repair shop can never recover on its invoice. The determination of whether a repair shop is in "substantial compliance" with the

Repair Act is guided by consideration of whether customers are protected against misunderstandings arising from deceptive oral estimates and whether the customers voluntarily accept the terms of the estimate, as articulated by the courts in both *Osteen* and *Lieberman*. Here, each customer signed the estimate of “no cost” which appeared on Glassco’s work orders, with the express understanding that their insurer would pay according to its policy.

The fact that even the lien provisions of §559.519 provide for recovery if a repair shop is in “substantial compliance” is conclusive text-based evidence that the Repair Act does not contain a voiding penalty. Where a statute expressly includes “substantial compliance” language, like Section 559.519 does, strict technical compliance is not mandatory. *Cf., Demase v. State Farm Fla. Ins.*, 351 So.3d 136, 139-41 (Fla 5<sup>th</sup> DCA 2022)(Sasso, J. concurring specially)(rejecting substantial compliance argument when legislature did not expressly include substantial compliance exception in statutory text).

Finally, when the legislature wants to render a transaction void in response to a statutory violation, the legislature knows how to do that. See, §501.708, Fla. Stat. (“Any provision of a contract or agreement which waives or limits in any way a consumer right described by s. 501.705, s. 501.706, or

s. 501.707 is contrary to public policy and is void and unenforceable.”); §626.9201(2)(a), Fla. Stat. (“if the contract is void, any premium received by the insurer from a third party shall be refunded to that party in full”); §627.707(5)(f), Fla. Stat. “(If a policyholder receives a rebate, coverage is void and the policyholder must refund the amount of the rebate to the insurer.”); §627.736(4)(h), Fla. Stat. (“Any insurance fraud voids all coverage arising from the claim related to such fraud under the personal injury protection coverage of the insured person who committed the fraud, irrespective of whether a portion of the insured person’s claim may be legitimate, and any benefits paid before the discovery of the fraud is recoverable by the insurer in its entirety from the person who committed insurance fraud.”). If Geico wants the Repair Act to include such a provision, it should lobby the legislature (not the courts) to adopt one.

### **CONCLUSION**

After applying the supremacy-of-text principle, the cause of action Geico seeks to assert is only cognizable under the remedies section of the Repair Act, §559.921, Fla. Stat. But, as discussed, the remedies section of the Repair Act only provides that right to an “injured” “customer.” §559.921(1), Fla. Stat.

The “voiding penalty” that Geico reads into the Repair Act does not exist, and the exhortation by which Geico would “create” one, derives from a misreading of cases under the lien sections, which are inapplicable. The Repair Act expressly contemplates that a non-compliant repair shop can recover the reasonable value of completed services, §559.921(7), Fla. Stat. Even the “lien” sections, which permits enforcement of liens upon substantial compliance, further negates that the plain language of the Repair Act provides a voiding penalty.

Any reasonable interpretation of the Repair Act giving due consideration of its entire statutory scheme negates Geico’s reading. In other words, the text of the Repair Act does not render windshield claims non-compensable, void contractual policy indemnity obligations, or give an insurer an independent statutory cause of action to enforce the violations of the statute. To read the Repair Act as either an act regulating windshield insurance claims or to create additional causes of action or defenses in favor of insurers would violate controlling statutory interpretation principles. The Court should answer both certified questions in the negative.

Respectfully Submitted,

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### **CERTIFICATE OF SERVICE**

**I HEREBY CERTIFY** that a true and correct copy of the foregoing was filed with the Clerk of the Court on January 18, 2024 using the Florida E-Portal System which will serve this document on all parties and counsel of record.

/s/ Howard J. Levine  
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