IN THE SUPREME COURT OF FLORIDA

Case No. SC23-1540

GOVERNMENT EMPLOYEES INSURANCE COMPANY, ET AL.,
Appellants,

v.

GLASSCO, INC., ET AL.,
Appellees.

INITIAL BRIEF OF APPELLANTS GOVERNMENT EMPLOYEES INSURANCE COMPANY, GEICO GENERAL INSURANCE COMPANY, AND GEICO INDEMNITY COMPANY

On a Certified Question from the United States Court of Appeals for the Eleventh Circuit
Case No. 23-11056

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INTRODUCTION

When Florida's Legislature enacted the Florida Motor Vehicle Repair Act (the "Repair Act"), it established requirements and prohibitions to address fraudulent and deceptive behavior by motor vehicle repair shops (including windshield repair shops). Among other things, the Repair Act requires repair shops to comply with notice and disclosure obligations before performing any work, and after completing any work, as part of the overall purpose to promote transparency, deter deceit, and protect the public. To effectuate the Repair Act's remedial purpose, Florida's lower courts have consistently held that noncompliant repair shops are not entitled to payment for repairs, from anyone, even in quantum meruit. That conclusion naturally follows from the Repair Act's fundamental purpose.

Because of no-deductible comprehensive insurance coverage in Florida and the ability to obtain assignments of benefits that take insureds out of the payment equation, repair shops, including Defendant-Appellee Glassco, Inc. ("Glassco"), have developed and implemented business models that violate the Repair Act in an attempt to avoid its very application. Indeed, repair shops such as

Glassco rely upon their violations of the Repair Act to profit. The notion that that a repair shop can purposely violate the statute to avoid its application is not only illogical, but renders the statute meaningless, produces absurd results, and flies in the face of the Repair Act's remedial purpose.

The repair shops' business models work as follows:

(i) The repair shops solicit insureds with Florida comprehensive insurance coverage (requiring insurers to reimburse insureds for windshield repairs without a deductible). The repair shops solicit insureds by representing that the windshield repair service they are offering is supposedly "free" or "no cost" to them. However, and in direct violation of the Repair Act, the repair shops never provide the insureds with a written estimate of their charges or how much they intend to bill against the insureds' insurance policies. Nor do they even provide the insureds with the required notice of their right to receive a written estimate concerning the repairs.

(ii) In further violation of the Repair Act, these "repair shops", which actually maintain no equipment or repair facilities

of their own, unlawfully subcontract all the repair work to third-party independent contractors, without the required notice to or consent from the insureds.

(iii) Thereafter, and in further violation of the Repair Act, the repair shops never provide the insureds with any invoices setting forth the charges for the completed repairs. Coupled with their failure to provide any estimates, this is both intended to and actually does prevent the insureds from ever finding out what work is claimed to have been performed and how much the repair shops will bill against their insurance policies.

If the scheme ended there, the insured would never be obligated to pay the repair shops because of their Repair Act violations. However, the repair shops never seek payment from the insureds because they know the insureds have no obligation to pay them due to their violations of the statute. Rather than making the legally required disclosures either before or after performing the work, the repair shops' focus is convincing unknowing or disinterested insureds to execute assignments of benefits before performing the work so that they can claim a right to seek payment from the

insureds' insurer even though the insured has no legal responsibility to pay them. Once armed with the assignments of benefits, the repair shops submit inflated charges to the insureds' insurers, knowing that in accordance with applicable policy limits, the insurers will pay a reasonable percentage but not 100% of the inflated charges.

And the story doesn't end there. Once the insurers pay the repair shops less than 100% of the inflated charges billed, the repair shops file a multitude of separate, individual collections suits in the Florida county courts, which has resulted in thousands of collections lawsuits based on the purported assignments of benefits seeking massive attorneys' fees under (now repealed) Section 627.468, Florida Statutes. While these county court lawsuits ostensibly are aimed at collecting the difference between the amounts billed and amounts paid, they are really aimed at setting up demands for attorneys' fees in each individual suit, and using those demands as leverage to attempt to extract large fee settlements from insurers.

That is exactly what occurred in this case. During the four-year period from 2016 through 2019, Glassco submitted over 1,700 claims to GEICO for windshield replacement services provided to its insureds in violation of the Repair Act. Glassco does not dispute that

it violated the Repair Act in multiple respects by never providing notice to the GEICO insureds of their right to receive written estimates, never giving the GEICO insureds written estimates, unlawfully subcontracting all the repair work to independent contractors without notice to the relevant GEICO insureds, and never providing the GEICO insureds with the required invoices upon completion of the work, among other things.

As a result of Glassco's acts, GEICO's insureds never had any notice of the inflated charges Glassco billed against their insurance policies,[1] nor the opportunity to question, let alone object to, the inflated charges, which was their legal right. Nor, for that matter, did GEICO's insureds ever receive notice of or the opportunity to object to Glassco's use of third-party subcontractors to perform the work.

Then, Glassco and its owners[2] filed suits in Florida county courts in all these claims, each aimed at collecting on a single one of

[1] Glassco profited from the bills submitted to GEICO in multiple ways, including seeking amounts beyond the actual cost for the repair service – i.e., the amount Glassco paid to the independent contractors for the performance of the windshield services.

[2] Glassco's owners are John Bailey, Jason Wilemon, and Andrew Victor (collectively, with Glassco, the "Defendants").

the invoices Glassco submitted to GEICO. While each of these lawsuits typically sought only a small amount, i.e., the difference between the inflated amount Glassco charged and the amount GEICO paid for the replacement, they exposed GEICO to exorbitant attorneys' fees claims, which typically amounted to many multiples of the underlying "damages" in each discrete case.

This was precisely the point of the Defendants' scheme. Indeed, the entire point of Glassco's operations was not to provide legitimate glass services, but rather – through violations of the Repair Act – to secure assignments of benefits from unknowing or disinterested insureds, secure payment of what they could from GEICO, and then file large numbers of lawsuits seeking massive fee awards. Glassco's operations readily support this conclusion, as: (i) Glassco itself did not employ any personnel who actually performed any windshield replacements; and (ii) Glassco never maintained any of the repair facilities or equipment that was necessary to actually perform windshield replacements. See ECF No. 129 at p. 7, citing ECF No. 125 at p. 14.

Because of this conduct, GEICO sued Glassco and its owners in the United States District Court for the Middle District of Florida,

alleging claims for violation of the Repair Act, as well as claims for fraud, unjust enrichment, and civil RICO violations based on the Defendants' misrepresentations regarding their compliance with the Repair Act and entitlement to payment for the windshield replacement charges. See ECF No. 1. Through these claims, GEICO sought to recover the money it already had paid Glassco on the windshield repair charges previously submitted. In addition, GEICO sought a declaratory judgment, to the effect that Glassco could not recover on its unpaid windshield repair charges, because of its pervasive violations of the Repair Act. See id.

However, the federal District Court dismissed GEICO's Repair Act claim at the pleading stage, and subsequently granted summary judgment dismissing GEICO's other claims to the extent that they were predicated on Glassco's non-compliance or misrepresentations regarding its compliance with the Repair Act and entitlement to payment. See ECF No. 59; ECF No. 148. At bottom, the District Court held that GEICO lacked standing to assert claims under the Repair Act, or any other claims based on Glassco's Repair Act violations, because the Repair Act only provides a private right of action to a "customer", but GEICO did not fall within the statutory definition of

a "customer". See ECF No. 148 at pp. 40-42, 63. The Court reached this result even though it was GEICO (and not the insured) that actually paid all Glassco's windshield replacement charges of behalf of the insureds, because the insureds had been convinced by Glassco to sign the assignments of benefits without the required statutory disclosures. See id.

In this context, the Repair Act 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". See id. However, the entire business operation of Glassco was designed and implemented to violate the Repair Act by intentionally failing to provide any written estimates, to anyone, and securing assignments of benefits in relation to Defendants' violations of the statute in connection with the claims they submitted to GEICO through Glassco. See ECF No. 125 at pp. 20-27.

Thus, if the Repair Act's statutory definition of "customer" actually were subject to the narrow construction applied by the federal District Court, then: (i) no one could ever sue the Defendants for violation of the Repair Act; because (ii) a "customer" must be the

person who signs the written estimate (or their designee); and yet (iii) the Defendants, in violation of the Repair Act, never provided anyone with any written estimates, and therefore never gave anyone the ability to sign any written estimates and thereby qualify as a "customer" as that term is defined in the statute. In other words, the District Court gave Defendants a preverbal "free pass" on liability for their violations of the statute because they purposely violated it, and then allowed them to use the assignment of benefits acquired as a result of those same statutory violations to submit an inflated claim to GEICO and ultimately sue for non-payment.

This logically cannot be the law. A repair shop and its owners should not be permitted to rely upon a business practice that is designed to and intentionally violates the Repair Act to insulate themselves from liability for those same violations. Nor should they be permitted to rely on assignments of benefits from insureds to present a claim to an insurer when the insureds themselves would not have been responsible to pay the repair shop in the first instance given the Repair Act violations.

Accordingly, GEICO appealed to the United States Court of Appeals for the Eleventh Circuit. Finding Florida law on these issues

to be unsettled, the Eleventh Circuit certified the following, non-exclusive questions to this Court:

> (i) 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?
>
> (ii) DO THE VIOLATIONS HERE UNDER 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?

Gov't Emps. Ins. Co. v. Glassco Inc., 85 F.4th 1136, 1147-48 (11th Cir. 2023).

As discussed below, the answer to both questions should be "yes".

STATEMENT OF CASE AND FACTS

The Repair Act provides a private cause of action to any "customer" who is "injured by a violation of this part". See Fla. Stat. §559.921(1). However, the statute defines "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". See Fla. Stat. §559.903. Therefore, under the federal District Court's interpretation of the statue, a repair shop could violate the Repair Act

by failing to provide any written estimates to anyone, and thereby prevent any "customer" from ever coming into existence, and by extension, insulate itself from liability for its own Repair Act violations.

Against this backdrop, the Eleventh Circuit's first certified question asks whether an insurance company, which is the party making payment to a repair shop holding an assignment of benefits (since the insured has no applicable deductible as required by Florida Law), should be permitted to assert a private cause of action under the Repair Act when it is the repair shop's violation of the statute that prevents anyone from ever qualifying as a "customer" under the statute. Gov't Emps. Ins. Co., 85 F.4th 1136 at 1148.

The second certified question asks whether a repair shop may not recover payment from an insurance company if, as here, the repair shop violates the Repair Act by failing to provide notice of the right to receive an estimate, failing to provide estimates, failing to provide invoices, and unlawfully subcontracting the repair work without notice to or consent from the relevant insureds. Id. at 1148-49.

In its certification order, the Eleventh Circuit emphasized that the manner in which it had framed the questions "should not restrict the Supreme Court of Florida's consideration of the problems posed by this case", that it did not intend to restrict this Court's "consideration of the issues that it perceives are raised by the record certified in this case", and that this "extends to the Supreme Court of Florida's restatement of the issues and the manner in which the answers are given." See id.

At bottom, the fundamental question is whether a repair shop that purposely operates in violation of the important remedial provisions of the Repair Act may nonetheless collect on its inflated charges and retain money collected because of admitted statutory violations. GEICO respectfully submits that pursuant to this Court's approach to remedial statutes and statutory interpretation, case law enforcing the Repair Act, and overarching principles of fundamental fairness and equity, the answer is "no". Both of the Eleventh Circuit's certified questions therefore should be answered in the affirmative.

I. The Relevant Statutory and Legal Framework

A. Comprehensive Insurance Coverage, Assignments of Benefits, and Claims for Glass Services

Nearly forty years ago, with the intent of making Florida safe by keeping damaged windshield glass off Florida's roads, the Florida legislature enacted Fla. Stat. §627.7288. Section 627.7288 requires automobile insurers to cover the replacement or repair to an insured's damaged windshield with no deductible, where the insured has comprehensive insurance coverage. In essence, under Fla. Stat. §627.7288, drivers with comprehensive insurance coverage get reimbursed for the costs of a windshield repair, or a new windshield at no out-of-pocket cost beyond their premiums. Id. The public safety intent behind Fla. Stat. §627.7288 was clear. The Legislature did not want Floridians driving with cracked and broken windshields, and enacted legislation to incentivize insureds to maintain their vehicles and keep broken windshields off the road. Id.

Because repair shops have no direct right of payment from insurers under an insurance policy, the glass service industry has evolved to operate through assignments of comprehensive insurance benefits. See ECF No. 1. Assignments of benefits can legitimately

facilitate payment by an insurer to a service provider that actually performs services and discloses its charges to the insured. But in this setting, glass repair shops such as Glassco, without disclosing the actual cost of the service, the amount they intend to bill the insurance company, or that they are not actually providing the service, convince the insureds to assign them their right to payment of comprehensive insurance benefits (i.e., reimbursement for a windshield replacement), in exchange for the shop's performance of the "free" windshield replacement (the "Glass Services"). Id. Once that assignment is executed, any involvement by the insured is essentially over and, armed with the assignment, the repair shop then seeks inflated payment directly from the insurer. Id.

While repair shops such as Glassco argue they are legally entitled to keep GEICO insureds "in the dark" regarding the amounts they intend to bill for Glass Services or who is providing the services, they provide no explanation to justify their intentional disregard of the requirements the statute mandates. See generally ECF No. 128. Rather, their argument is seemingly circular – because they acquired an assignment of benefits from an insured that has comprehensive coverage rather than seeking payment directly from the insured, they

are entitled to prevent the insureds from (i) ever being informed of the actual cost of the pertinent Glass Services; (ii) having the ability to evaluate whether the price to be charged for the Glass Services is reasonable; (iii) assessing whether the person actually performing the service is competent and reputable; and (iv) evaluating to what extent the Glass Services charges will impact their insurance coverage and premiums. See generally ECF No. 1. In short, insureds are prevented from being able to make informed decisions regarding whether and to what extent they want to proceed with the services being offered.

B. The Repair Act and Consequences for Violations of the Repair Act

Glassco's conduct is the exact type of deceptive automobile repair practices that the Florida Legislature enacted the Repair Act to prevent. See generally Fla. Stat. §559; see also §559.905. In particular, the Legislature enacted the Repair Act in 1980 to provide much-needed protections against fraudulent and misleading repair shops, including shops that provide Glass Services. See generally Fla. Stat. §559; see also Fla. Stat. §559.903(8). Among other things, transparency and disclosure were key considerations in enacting the Repair Act as it was "apparently the intent of the legislature to protect

consumers against misunderstandings arising from oral estimates of motor vehicle repairs and the legal disputes and litigation that result from the 'fait accompli' nature of claims for repair work already done." Osteen v. Morris, 481 So.2d 1287, 1290 (Fla. 5th DCA 1986).

Thus, the Repair Act provides that if the cost of the proposed Glass Services or other repair work will exceed $100.00, the repair shop must present to the "customer" a written notice conspicuously setting forth only the following statement, in a separate, blocked section, in capital letters of at least 12-point type:

> **PLEASE READ CAREFULLY, CHECK ONE OF THE STATEMENTS BELOW, AND SIGN:**
> **I UNDERSTAND THAT, UNDER STATE LAW, I AM ENTITLED TO A WRITTEN ESTIMATE IF MY FINAL BILL WILL EXCEED $100.**
> **____ I REQUEST A WRITTEN ESTIMATE.**
> **____ I DO NOT REQUEST A WRITTEN ESTIMATE AS LONG AS THE REPAIR COSTS DO NOT EXCEED $_____ . THE SHOP MAY NOT EXCEED THIS AMOUNT WITHOUT MY WRITTEN OR ORAL APPROVAL.**
> **____ I DO NOT REQUEST A WRITTEN ESTIMATE.**
> **SIGNED DATE**

See Fla. Stat. § 559.905(2).

In this context, the Repair Act defines "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." See Fla. Stat. §559.903(2).

If the repair shop provides the required disclosure notice pursuant to Fla. Stat. §559.905(2), and the customer checks off one of the statements indicating that they do not request a written estimate, then the repair shop is not required to provide the customer with the estimated cost of the proposed repairs. See Fla. Stat. § 559.905(3). Otherwise, repair shops must provide a written repair estimate to the customer, setting forth, among other things, the estimated cost of the proposed repairs if the cost of the repairs will exceed $100.00 to the customer. See Fla. Stat. § 559.905(1). Notably, the notice and disclosure requirements must be complied with by the repair shop prior to any work being performed. See Fla. Stat. § 559.905(3)

Additionally, to make certain that the customer is on notice of the amount to be charged for any repair, the Repair Act also requires that, upon completion of any repair, the repair shop must provide its customer with a legible copy of the invoice for the repair, including:

(i) an "itemized description of all labor, parts and merchandize supplied and the costs thereof";

(ii) a "statement indicating what, if anything, is guaranteed in connection with the repair work and the time and mileage period for which the guarantee is effective"; and

(iii) the "current date and odometer reading of the motor vehicle".

See Fla. Stat. §559.911.

In addition to these various disclosure mandates, the Repair Act – to protect the public – also prohibits repair shops from engaging in certain kinds of deceptive and unfair conduct. Among other things, the Repair Act prohibits repair shops:

(i) from subcontracting Glass Services or other repair work without the knowledge or consent of the customer, unless the repair shop demonstrates that the customer could not reasonably have been notified (see Fla. Stat. §559.920(14));

(ii) from charging for repairs which have not been expressly or impliedly authorized (see Fla. Stat. § 559.920(2));

(iii) from making or authorizing in any manner any statement which is untrue, deceptive or misleading, and which is

known, or which should be known, to be untrue, deceptive or misleading (see Fla. Stat. § 559.920(8));

(iv) from causing or allowing a customer to sign any work order that does not state the repairs requested by the customer or the automobile's odometer reading at the time of repair (see Fla. Stat. § 559.920(11));

(v) from failing or refusing to give to a customer a copy of any document requiring the customer's signature upon completion or cancellation of the repair work (see Fla. Stat. § 559.920(12)); and

(vi) from performing any other act that is a violation of the Repair Act or that constitutes fraud or misrepresentation (see Fla. Stat. § 559.920(17)).

To effectuate the Legislature's remedial intent, Florida's intermediate appellate courts have consistently held that repair shops that violate the Repair Act are not entitled to receive payment for repair work, even in quantum meruit. For example, in Osteen v. Morris, supra, the customer never received either a written estimate, or written notice of his right to a written estimate, as the Repair Act required. See id., 481 So. 2d at 1288. However, the customer did

receive an oral estimate, and thereafter actually authorized the repair work. Id., at 1289. After the repair work was complete, the customer paid only about half of the charges and refused to pay the balance. The repair shop filed suit to collect the balance, and the customer counterclaimed to recover the partial payment already made. Id. In response to the repair shop's appeal from an adverse trial court ruling, the District Court of Appeals affirmed, noting that although the "customer's only injury is that he paid the shop for services for which he was not liable due to the shop violating the [Repair Act]….if the customer is held legally liable when the shop has disregarded the provisions of the statute, the shop could effectively disregard the intention of the legislature as evidenced by the provisions of this act." Id. The Court also held that "[the Repair Act] must necessarily be construed to be a limitation on the common law principle of quantum meruit because the recognition of a quasi-contractual obligation by the law in this situation would necessarily circumvent the very dictates of the statute by enabling a motor vehicle repair shop to ignore the statutory requirements of providing a written estimate or obtaining a written waiver." Id. at 1290.

Along similar lines, in Gonzalez v. Tremont Body & Towing, Inc., 483 So. 2d 503 (Fla. 3d DCA 1986), the customer sought review of a trial court decision awarding damages to a repair shop, in quantum meruit, that had not complied with the Repair Act's written estimate requirements. See id., 483 So.2d at 504. The District Court of Appeals reversed the trial court, holding that, "[o]n the authority of the well-considered decision in Osteen v. Morris ..., we reverse the judgment awarded the appellee automobile repair shop on a quantum meruit basis notwithstanding its admitted failure to conform with the written repair estimate requirements contained in section 559.905 of the Motor Vehicle Repair Act." Id.; see also FGAP Inv. Corp. v. A1 Body & Glass of Coral Springs, LLC, 325 So. 3d 1006, 1008 (Fla. 4th DCA 2021)("Where a motor vehicle repair shop fails to substantially comply with the provisions of the Act, it may not enforce a lien to secure payment or proceed under a theory of implied contract."); Safari Tours, Inc. v. Pasco, 255 So. 3d 415, 417 (Fla. 3d DCA 2018)(repair shop that failed to comply with Repair Act was not entitled to recover on its charges); Perez-Priego v. Bayside Carburetor & Ignition Corp., 633 So. 2d 1190, 1191 (Fla. 5th DCA 1994)("under Florida law, a consumer who is not given a written estimate may

recover the amount of the repair bill and still retain the benefit of the repairs."); 1616 Sunrise Motors, Inc. v. A-Leet Leasing of Florida, 547 So. 2d 267 (Fla. 4th DCA 1989)(affirming denial of recovery to repair shop that violated the Repair Act's prohibition against making or charging for repairs without express or implied authorization).[3]

The Repair Act is a remedial statute. See, e.g., Raymar Constr. Co. v. Lopez-Soto, 547 So. 2d 282, 284 (Fla. 2d DCA 1989). As such, attempts to impose a narrow construction on its terms, which would permit the very kind of improper conduct the statute was designed to remedy, are to be avoided. For instance, in Osteen, supra, the District Court of Appeals observed notwithstanding the absence of a stated remedy that the non-compliant repair shop could not recover, because "if the customer is held legally liable when the shop has disregarded the provisions of the statute, the shop could effectively

[3] See also Git R Done Concrete Cutting, LLC v. Swinsons Car Care Center, Inc., 22 Fla. L. Weekly Supp. 226a (Fla. 9th Jud. Cir. July 30, 2014)(repair shop that failed to comply with the Repair Act was not entitled to recover on its charges); Reynolds v. Gorilla Motors, Inc., 11 Fla. L. Weekly Supp. 1047a (Fla. 15th Jud. Cir. August 31, 2004)("Under Florida law, a repair shop that fails to comply with Florida Statute 559.901 et seq. may not recover or retain the amount of the repair bill, despite the fact that the customer obtains a benefit and the overall result appears unjust.")

disregard the intention of the legislature as evidenced by the provisions of this act". Id.; see also 1616 Sunrise Motors, Inc., supra (rejecting narrow construction of the term "customer" in Repair Act, where it would undermine the purposes of the statute); Raymar Constr. Co., supra (reversing trial court, which improperly had imposed a narrow construction on the term "consumer transaction" in the Repair Act).

C. Former Fla. Stat. §627.428, and its Perverse Incentives for Glass Service Shops to Flood Florida Courts With Collections Lawsuits

Though the Repair Act requires repair shops to put their customers on notice of the amounts they intend to charge for automobile repairs (via written estimates), and the amounts they actually do charge for the repairs (via written invoices), repair shops such as Glassco have operated in pervasive violation of these requirements. See generally, ECF No. 1; ECF No. 125. In fact, Glassco's entire business model is designed to allow Glassco to profit through violations of the Repair Act. Id.

As discussed above, these shops do not provide insureds with the option to receive written estimates, never actually provide any written estimates, and never provide insureds with invoices upon the

completion of the Glass Services. See ECF No. 1 at ¶¶ 67-84; ECF No. 125 at pp. 13-29. Instead, these repair shops solicit insureds to assign to them their comprehensive insurance benefits with misleading promises of supposedly "free" or "no cost" windshield repairs, as well as other blandishments. See ECF No. 1 at ¶¶ 82-83, 89-93. Based on these assignments of benefits, they submit inflated invoices to the insureds' insurance companies without advising the insureds how much they intend to charge, or do charge, against their insurance policies. When the insurers pay less than 100% of the inflated charges in accordance with the relevant policy limits, the repair shops (including Glassco) proceed to file thousands upon thousands of single-count breach of contract actions in Florida county courts. Id.

While the potential damages in each case are low, former Fla. Stat. §627.428 exposed the insurance companies to substantial attorneys' fee awards in each individual lawsuit, typically many multiple of the amount in dispute in each case. The entire scheme is designed, in part, to generate the kind of inflated invoices, and attendant collections litigation, that the Repair Act was specifically designed to prevent by requiring the upfront disclosure and

authorization of the services and cost before the work begins. See Osteen, supra, 481 So.2d at 1290.

To put the adverse impact of this scheme into perspective, the Florida Department of Financial Services reported that the number of windshield glass collections lawsuits involving assignments has grown exponentially since 2011. See SC/SB 1002 Bill Analysis and Fiscal Impact Statement, Fla. Senate, at p. 3 (April 11, 2023).[4] Between 2016 and 2019, Glassco itself filed over 1,700 actions against GEICO alone. Gov't Emps. Ins. Co., supra, 85 F.4th 1136, at 1138-39. In 2022, 33,196 windshield repair collections actions were filed in Florida's courts. See SC/SB 1002 Bill Analysis and Fiscal Impact Statement, Fla. Senate, at p. 3 (April 11, 2023).

The Florida Legislature recognized this problem and, just this year, enacted new legislation to begin to fix it. See Fla. Stat. §559.920. Pursuant to the Senate Bill 1002 ("SB 1002") legislative package, the Legislature created new requirements under the Repair Act that further regulate Glass Services shops. Id. Among the

[4] Available at https://www.flsenate.gov/Session/Bill/2023/1002/Analyses/2023s01002.rc.PDF

revisions to Section 559.920, repair shops are prohibited from offering incentives in exchange for making an insurance claim for Glass Services and extends this prohibition to a glass shop's nonemployee subcontractors, and subjects glass shops who violate this provision to disciplinary action. Fla. Stat. §559.920. In describing the status of the Glass Services scheme in Florida that necessitated legislative changes, the Florida Senate specifically referenced the burden that the overwhelming volume of windshield glass collections lawsuits has placed on Florida courts and charted the exponential growth in windshield litigation involving assignments from 2011 through 2022. See SC/SB 1002 Bill Analysis and Fiscal Impact Statement, Fla. Senate, at p. 3 (April 11, 2023).

Thus, the Eleventh Circuit's certified questions directly address, and could resolve, the thousands of collections lawsuits that are currently pending or are yet to be brought in Florida's courts by Glassco and similar repair shops that have violated the Repair Act but are nonetheless seeking payment from insurers on claims that predate the July 1, 2023 effective date of the statute. See Gov't Emps. Ins. Co., supra, 85 F.4th 1136.

Based on the record in this case and the remedial nature of the statute, the Repair Act should be interpreted to fulfill its intended purpose. Any other result would reward non-compliant repair shops, and effectively nullify the remedial provisions of the Repair Act, by allowing them to avoid the effect of the statute by violating it.

II. GEICO's Federal Lawsuit Against Glassco and its Owners

On August 7, 2019, GEICO filed a lawsuit against Glassco and its owners in the United States District Court for the Middle District of Florida. See ECF No. 1.

GEICO in its Complaint alleged that, beginning in 2016, Glassco and its owners, using the interstate wires, billed GEICO and other Florida automobile insurers hundreds of thousands of dollars through Glassco for fraudulent, unlawful, and otherwise non-reimbursable Glass Services. See ECF. No. 1, ¶¶1-11. Among other things, GEICO alleged the Defendants falsely represented in their billing that they were entitled to be compensated for the Glass Services, when in fact they were not, because, among other things, Defendants, in violation of the Repair Act: (i) never complied with the notice, written estimate or invoice provisions of the Repair Act; and (ii) unlawfully subcontracted all of the Glass Services to independent

contractors without notice to GEICO or its insureds, and then falsely billed GEICO for the Glass Services as if they actually had been provided by Glassco. See id., ¶¶48-66; 67-88.

Based on these allegations, GEICO asserted claims against the Defendants for violation of the Repair Act, common law fraud, civil RICO violations under 18 U.S.C. § 1962(c) and 18 U.S.C. § 1962(d), violation of the Florida Civil Remedies for Criminal Practices Act (the "FCRCPA"), violation of the Florida Deceptive and Unfair Trade Practices Act (the "FDUTPA"), and unjust enrichment, to recover damages for the payments GEICO already had made on Glassco's Glass Services billing. See ECF No. 1, ¶¶ 117-162. In addition, GEICO sought a declaratory judgment that it was not required to pay Glassco's outstanding and unpaid billing, because of their fraudulent and unlawful activities. See id., ¶¶ 111-116.

A. The Proceedings Before the Federal District Court

The Defendants filed separate motions to dismiss GEICO's claims, which GEICO opposed. See ECF Nos. 14, 16, 18, 21-23, 25, 29. On April 16, 2020, the federal District Court denied the motions to dismiss GEICO's fraud, unjust enrichment, RICO, FDUTPA, and declaratory judgment claims, but granted the motions to the limited

extent of dismissing GEICO's claim for affirmative relief against the Defendants under the Repair Act. See ECF No. 59, pp. 6-22. The District Court found that GEICO could not sue under the Repair Act because GEICO was not a 'customer'." See ECF No. 59, p. 10, quoting Fla. Stat. § 559.903(1), concluding that:

> Although 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,' Starling v. R.J. Reynolds Tobacco Co., 845 F. Supp. 2d 1215, 1232 (M.D. Fla. 2011), no reasonable construction permits GEICO – an insurer, to sue as a 'customer' under the Repair Act.

See id., pp. 11, 22.

The District Court deferred for summary judgment the question of whether a repair shop that violated the Repair Act could collect from an insurer on its charges, or whether an insurer could predicate its fraud, RICO, unjust enrichment, or deceptive trade practices claims on misrepresentations in Glass Services billing regarding compliance with the Repair Act and eligibility to recover payment. See id., pp. 15-18, 20, 22.

Following the close of discovery, GEICO and the Defendants each moved for summary judgment. ECF Nos. 122, 123, 125, 127, 128. The record on summary judgment was clear that the

Defendants violated the Repair Act by: (i) never providing any written notices to GEICO or its insureds before starting the work, advising them of their right to receive or waive a written estimate as required by Fla. Stat. § 559.905(2); see ECF No. 125, pp. 20-23; (ii) never providing GEICO or its insureds before starting the work with any written estimate of how much they intended to charge for the Glass Services as required by Fla. Stat. § 559.905(2); see id; (iii) subcontracting all their Glass Services to third-party independent contractors, without providing notice to, or obtaining consent from, the relevant GEICO insureds, despite the fact that they had the ability to provide notice to and obtain the consent of the insureds; see ECF No. 125, pp. 13-21; (iv) following completion of the purported Glass Services, never providing any GEICO insureds with any invoices for the Glass Services, let alone in the form required by the Repair Act. See ECF No. 125, pp. 23-24; and (v) permitting GEICO insureds to sign work orders that did not state the automobiles' odometer readings. See ECF No. 126-1, ¶28.

GEICO sought summary judgment on its declaratory judgment claim, which sought a declaration that Glassco was not entitled to receive payment on the outstanding and unpaid claims it had

submitted to GEICO, as well as on its unjust enrichment and FDUTPA claims, which sought to recover the payments GEICO had already made on the Defendants' non-reimbursable Glass Services billing. See ECF No. 125, pp. 13-33.

The Defendants filed separate memoranda opposing GEICO's summary judgment motion, and filed their own summary judgment motions, seeking the dismissal of GEICO's entire case. See ECF Nos. 122, 123, 127, 128, 129, 130, 131, 136.

In its September 24, 2021 summary judgment order, the federal District Court granted the Defendants partial summary judgment dismissing GEICO's declaratory judgment claim, as well as GEICO's common law fraud, RICO, FCRCPA, FDUTPA, and unjust enrichment claims, to the extent that those claims were based on Defendants' failure to comply with the Repair Act, or their misrepresentations regarding their compliance with the Repair Act and entitlement to payment. See ECF No. 148, pp. 24-25, 27-28, 55, 59 (dismissing the fraud, RICO, and unjust enrichment claims, to the extent based on Repair Act violations or misrepresentations, because "GEICO is not a 'customer' under the Repair Act", "the Repair Act contains no provision rendering unpayable claims for repair work actually

performed by noncompliant repair shops", and "[c]laims under the Repair Act for repairs performed by noncompliant repair shops are not fraudulent or unlawful vis-a-vis the insurance company"); Id. at pp. 18-22, 32-35, 62-63 (granting Defendants partial summary judgment on GEICO's FDUTPA claim, because "Geico cannot establish an implied per se FDUTPA violation predicated on the Repair Act, at least not when it is not a 'customer' for purposes of the Act", and finding that "[n]othing in the Repair Act states that violations under its provisions constitute deceptive and unfair trade practices under FDUTPA").

GEICO elected to not proceed to trial on its remaining claims that survived the District Court's prior rulings. GEICO therefore amended its Complaint to remove any claims that had survived dismissal, and then moved for entry of final judgment, to allow GEICO to seek immediate appellate review of the District Court's rulings. See ECF No. 182.

B. GEICO's Appeals to the Eleventh Circuit and the Present Certified Questions

GEICO timely appealed to the Eleventh Circuit. In a November 7, 2023, order, the Eleventh Circuit surveyed the parties' respective

arguments regarding whether, and to what extent, an insurance company can assert claims for declaratory relief and damages against a repair shop based upon its violations of the Repair Act. See Gov't Emps. Ins. Co., 85 F.4th 1136, at 1138-45. The Eleventh Circuit concluded that:

> After careful review, and with the benefit of oral argument, we could find no decision from the Supreme Court of Florida, Florida appellate courts, or this Court answering the issues in this appeal. As the district court here aptly observed, "district courts within the circuit have routinely confronted similar Repair Act claims without binding precedent to apply," and "clarification—sooner rather than later—about the scope of Florida law appears advantageous to all." Moreover, the issues in this appeal will impact thousands of windshield repair claims.
>
> * * * * *
>
> Accordingly, we certify to the Supreme Court of Florida 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 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 phrasing used in these certified questions should not restrict the Supreme Court of Florida's consideration of the problems posed by this case. Of course, our statement of any of the questions certified does not "limit the inquiry" of the Supreme Court of Florida or restrict its consideration of the

> issues that it perceives are raised by the record certified in this case. Cassell, 688 F.3d at 1301 (internal quotation marks omitted). This extends to the Supreme Court of Florida's restatement of the issues and the manner in which the answers are given.

Id. at pp. 1147-48.

Thus, the proper application of the Repair Act is squarely before this Court to decide.

SUMMARY OF ARGUMENT

Principles of statutory interpretation, contract enforcement, and fundamental fairness – as well as related public policy considerations – require that both certified questions be answered in the affirmative.

The Repair Act is a remedial statute, and therefore should be construed to effectuate the Legislature's remedial intent. In this context, the Repair Act was designed by the Legislature to protect the public from fraudulent and deceptive motor vehicle repair facilities and particularly, "misunderstandings arising from oral estimates of motor vehicle repairs and the legal disputes and litigation that result from the 'fait accompli' nature of claims for repair work already done." Osteen, supra.

As a result, Florida courts consistently have held that repair shops that operate in violation of material provisions of the Repair Act may not collect on their charges, even in quantum meruit. These same courts have rejected attempts by repair shops to circumvent the Repair Act's remedial provisions through a narrow interpretation of its terms. No different result is warranted here simply because it is the insured's insurer (rather than the insured) that is being asked to make payment to Glassco for the service. At bottom, no one (including the insured or GEICO) was ever given the opportunity to review, consider, or authorize the scope of Glassco's proposed work or charges before it started. Glassco did exactly what the statute prohibits. It made unilateral decisions, without notice to GEICO's insured, GEICO, or anybody for that matter, on what to do, who should do it and how much to charge, and then submitted bills to GEICO for review and payment only after the work was already done.

At bottom, if a repair shop could purposely operate in pervasive violation of the Repair Act's remedial provisions, as Glassco has admittedly done, but nonetheless collect on its repair charges, it would undermine the entire purpose of the statute, if not render it meaningless. Indeed, the record here makes clear that the structure

and purpose of Glassco's entire business operation was to violate the Repair Act to avoid the effect of the Repair Act. In this context, this Court therefore should construe the statute to give effect to the intent of the Legislature and avoid any construction that would render its remedial provisions both ineffective and toothless.

In addition to these principles of statutory construction, other considerations likewise demonstrate why a non-compliant repair shop should be precluded from recovery on its charges, whether from a "customer" or from the customer's insurer. For instance, where, as here, a repair shop systemically operates in violation of several material provisions of the Repair Act, and then seeks to enforce its purported contractual or quasi-contractual right to payment, enforcement should be denied as against public policy and on grounds of illegality.

The answer to the Eleventh Circuit's first certified question should be "yes". The Repair Act provides a private right of action to a "customer" and defines "customer" to mean the person who signs the written estimate (or their designee). But where a repair shop violates the Repair Act by systematically failing to provide anyone with any written estimates, the repair shop – by its own violations of

the Repair Act – prevents any "customer", as that term is defined in the statute, from ever coming into existence. This, in turn, opens the door to a perverse scenario in which a repair shop can rely upon its own violations of the Repair Act to insulate itself from civil liability for those very violations of the Repair Act.

Principles of statutory construction as well as equitable considerations counsel against permitting this kind of outcome. The remedial provisions of the Repair Act would be totally negated if a repair shop could operate in violation of the statute by failing to provide any written estimate, and – through the simple expedient of its own violation – avoid responsibility for that violation. The Court should not construe the Repair Act in a manner that would render its private cause of action an effective nullity. Rather, the Court instead should find that an insurer that pays for a repair for its insured stands in the shoes of its insured (which are reciprocal to the rights Glassco claims to have by virtue of the assignments of benefits) and may assert a claim under the Repair Act where – as in this case – an errant repair shop fails to provide any estimate to its insured, and thereby prevents any "customer" from ever coming into existence.

The answer to the Eleventh Circuit's second certified question – i.e., whether a repair shop's violations of the Repair Act preclude it from recovering against a "customer's" insurance company, just as they would preclude recovery against the customer itself, clearly should be "yes", as well. In this respect, it makes no difference whether the party resisting payment is the customer or the customer's insurer. Once the statute has been violated by a repair shop, the right to payment no longer exists from the customer, or from anyone else who may have responsibility for payment on his/her behalf. That is even more true in the context of insurance, where the right to a repair shop's payment against the customer's insurer arises solely from an assignment of benefits given by the customer, who himself/herself has no responsibility for payment because of the repair shop's violation of the statute.

Similarly, it would undermine the remedial purpose of the Repair Act if a non-compliant shop were permitted to collect on its repair charges. It likewise would violate fundamental notions of fairness and equity if a repair shop could intentionally violate the Repair Act to the point where its violations precluded recovery from

a "customer", but nevertheless still be permitted to collect from the customer's insurer who pays on the customer's behalf.

STANDARD OF REVIEW

Because the certified questions involve pure questions of law and statutory interpretation, the standard of review is de novo. See, e.g., Bartram v. U.S. Bank, N.A., 211 So. 3d 1009, 1015-1016 (Fla. 2016)("The rephrased certified question involves a pure question of law. Therefore, the standard of review is de novo."); Koster v. Sullivan, 160 So. 3d 385, 388 (Fla. 2015)("Because the certified question involves the interpretation of a Florida statute, the proper standard of review is de novo.")

ARGUMENT

GEICO respectfully suggests requests that this Court should answer both certified questions in the affirmative.

I. The Second Certified Question Should be Answered in the Affirmative – Just as Non-Compliant Repair Shops are Precluded from Recovering from a "Customer", They Also Should be Precluded from Recovering from the Customer's Insurer

Established principles of statutory interpretation, contract enforcement, and fundamental fairness – as well as related public

policy considerations – preclude recovery by non-compliant repair shops, from anyone, whether a "customer" or a non-"customer".

A. The Repair Act is a Remedial Statute and is Therefore Entitled to a Liberal Construction to Effectuate its Legislative Purpose

A basic rule of statutory construction is that a statute must be interpreted with, and in furtherance of, its legislative intent, not in contradiction of such purposes. Smith v. City of Petersburg, 302 So.2d 756, 757 (Fla. 1974). Courts should avoid statutory interpretation that results in frustration of statutory purpose. Bretherick v. State, 170 So.3d 766, 772 (Fla. 2015); Reeves v. State, 957 So.2d 625, 629 (Fla. 2007). Courts also should avoid a statutory interpretation that leads to absurd results. See, e.g., Winter v. Playa del Sol, Inc., 353 So.2d 598, 599 (4th DCA 1977). See generally, McCloud v. State, 260 So.3d 911, 914 (Fla. 2018) (noting "legislative intent is the polestar that guides a court's statutory construction analysis"); Lanimore v. State, 2 So.3d 101, 106 (Fla. 2008).

Further, courts should not interpret remedial statutes strictly or narrowly to thwart the intent of the legislature. Golf Channel v. Jenkins, 752 So.2d 561, 566 (Fla. 2000) (holding ambiguities in [the relevant statute] must be liberally construed in favor of granting

access to the remedy provided by the Legislature"); E.A.R. v. State, 4 So.3d 614, 633 (Fla. 2009) (finding that a "failure to connect [statutory requirements] to the … ultimate statutory duty … completely undermine[d] the Legislature's carefully crafted statutory scheme"). Put another way, "[i]f a statute is considered remedial, it should be given a liberal interpretation and should be construed to give the terms used the most extensive meaning to which they are reasonably susceptible. Remedial statutes are to be interpreted in favor of granting access to the remedy provided by the Legislature." Starling v. R.J. Reynolds Tobacco Co., 845 F. Supp. 2d 1215, 1232 (M.D. Fla. 2011).

There is no question that the Repair Act is a remedial statute. The statute is intended to protect the public by, among other things, providing transparency and certainty regarding the cost of automobile repairs by requiring specific disclosures and informed consent in advance of the performance of repairs. See Fla. Stat. §559.903. Consistent with this Court's directives, Florida's courts have acknowledged, when interpreting the Repair Act, that it should be given a liberal construction to advance the remedy provided where it is consistent with the legislative purpose.

B. The Repair Act Achieves the Legislature's Goal of Promoting Transparency, Deterring Deceit, and Protecting the Public by Setting Stringent Requirements for Repair Shops, and by Precluding Recovery by Non-Compliant Shops

The Repair Act prohibits repair shops from engaging in a long list of "unlawful acts and practices", including the subcontracting of repair work without notice to or consent from the customer. Fla. Stat. §559.920.

The Act further mandates stringent business practices that repair shops must follow to safeguard against deceit and surprise, "fait accompli" automobile repair charges. Specifically, repair shops are required to provide customers with written repair estimates where the cost of the repair to the customer will exceed $100. See Fla. Stat. § 559.905(1). Additionally, § 559.905(2) requires that if the cost of the glass repair work will exceed $100.00 (whether to the "customer", or anyone else), the repair shop must present to the "customer" a written notice conspicuously setting forth only the following statement, in a separate, blocked section, in capital letters of at least 12-point type:

> **PLEASE READ CAREFULLY, CHECK ONE OF THE STATEMENTS BELOW, AND SIGN:**

I UNDERSTAND THAT, UNDER STATE LAW, I AM ENTITLED TO A WRITTEN ESTIMATE IF MY FINAL BILL WILL EXCEED $100.

____ I REQUEST A WRITTEN ESTIMATE.

____ I DO NOT REQUEST A WRITTEN ESTIMATE AS LONG AS THE REPAIR COSTS DO NOT EXCEED $_____ . THE SHOP MAY NOT EXCEED THIS AMOUNT WITHOUT MY WRITTEN OR ORAL APPROVAL.

____ I DO NOT REQUEST A WRITTEN ESTIMATE.

SIGNED DATE

Fla. Stat. §559.905(2).

Both the written repair estimate and the disclosure statement must be provided to the customer before any service even begins. Fla. Stat. §559.905(4). If, and only if, the customer waives in writing their right to receive a written estimate, the repair shop is not required to disclose the estimated cost of the repair. Fla. Stat. §559.905(3). Thus, unless the person requesting the repair services checks off one of the statements indicating that they do not request a written estimate, the repair shop must provide a written repair estimate setting forth – among other things – the estimated cost of the proposed repairs. Fla. Stat. §559.905(1).

Significantly, the Legislature did not limit a repair shop's obligation to provide notice of an individual's right to receive a written

estimate to situations where the charge to a customer exceeds $100. Fla. Stat. § 559.905(2).

On its face, Section 559.905 indicates that the Legislature intended for repair shops to adhere to a specific and orderly sequence of events before initiating automobile repairs. First, the individual requesting the repairs presents their vehicle and the repair shop agrees to perform the requested repair. Fla. Stat. §559.905(6). Then, the repair shop obtains and records preliminary vehicle information, informs their customer of their right to receive a written estimate listing the total cost for the repairs, and if the customer requests a written estimate, an estimate is provided. Fla. Stat. §559.905(1); (2); (4).

Then, after the repair has been completed, the Repair Act further requires the repair shop to "provide each customer . . . with a legible copy of an invoice for such repair." Fla. Stat. §559.911. Any such invoice must, among other things, set forth:

(i) an "itemized description of all labor, parts, and merchandise supplied and the costs thereof";

(ii) a "statement indicating what, if anything, is guaranteed in connection with the repair work and the time and mileage period for which the guarantee is effective"; and

(iii) the "current date and odometer reading of the motor vehicle".

Id.

Against this backdrop, it is clear the Legislature wanted to ensure that Florida consumers received advance notice of how much would be charged for motor vehicle repairs, as well as actual notice of how much ultimately was charged for repairs. Osteen, 481 So. 2d at 1290. While the Repair Act imposes these various requirements and prohibitions on repair shops, it does not explicitly preclude non-compliant shops from recovering on their repair charges. See Fla. Stat. §§ 559.901, et seq.[5] Nonetheless, to give effect to the clear legislative intent behind the statute, Florida courts consistently have held that repair shops that violate material provisions of the Repair Act may not collect on their charges, even in quantum meruit.

[5] The Repair Act does, however, provide that a non-compliant repair shop may not refuse to return a customer's motor vehicle by virtue of any miscellaneous lien, nor may it enforce such a lien in any other fashion. See Fla. Stat. § 559.919.

This issue appears to have first arisen in Osteen, supra, where the repair shop had failed to provide a written estimate to its customer, or obtain an estimate waiver from the customer, but nonetheless sought to recover on its charges for the repair. The trial court found that, because of these violations of the Repair Act, the repair shop could not recover the outstanding balance of its repair charges and had to refund the partial payment it had already received. Id., 481 So.2d at 1289. However, the trial court – evidently noting that the Repair Act did not explicitly preclude recovery to a non-compliant shop – then certified various questions to the Fifth District Court of Appeals. Id. These certified questions included "[w]hether general equitable principles such as quantum meruit apply in an action brought or defended under" the Repair Act, and "[w]hether a court, when asked to apply a statute such as the one here, which is in derogation of common law, should construe it strictly, in which case it would be emasculated, or should uphold the apparent intent of the Legislature, even where the Legislature has not clearly stated exactly what the 'remedy' created by the Statute is supposed to be, if indeed a remedy has been created?" Id.

In response, the District Court of Appeals correctly decided to construe the Repair Act to give effect to the intent of the Legislature, and avoided a construction that would render its remedial provisions ineffective. In particular, the Osteen court reasoned that, "if the customer is held legally liable when the shop has disregarded the provisions of the statute, the shop could effectively disregard the intention of the legislature as evidenced by the provisions of this act". Id., 481 So.2d at 1289. The District Court of Appeals went on to hold that "[t]his consumer protection statute must necessarily be construed to be a limitation on the common law principle of quantum meruit because the recognition of a quasi-contractual obligation by the law in this situation would necessarily circumvent the very dictates of the statute by enabling a motor vehicle repair shop to ignore the statutory requirements of providing a written estimate or obtaining a written waiver." Id., 481 So.2d at 1290. The District Court of Appeals concluded by affirming the trial court's decision, noting that:

> A statute is construed so as to effectuate the intent of the legislature. It was apparently the intent of the legislature to protect consumers against misunderstandings arising from oral estimates of motor vehicle repairs and the legal disputes and litigation that result from the 'fait accompli' nature of claims for

> repair work already done. We do not suggest that the result in this case is fair to the shop. We only agree with the trial court that this result appears to be mandated in this case by the statute. In the situation addressed by the legislature - the elimination of the legal problem caused to both the customer and the repair shop when repairs are made without a clear written estimate given before the repairs are undertaken - the legislature cannot help the consumer without endangering justice to the repairman in a given case. In such instances the court must carry out the intent of the legislature and cannot do what the court may feel is justice in the case.

Id.

In the years since Osteen was decided, other District Courts of Appeals have consistently agreed with its reasoning. See, e.g., Tremont Body & Towing, supra, 483 So.2d at 503 (Third District Court of Appeals held that, "… we reverse the judgment awarded the appellee automobile repair shop on a quantum meruit basis notwithstanding its admitted failure to conform with the written repair estimate requirements contained in section 559.905 of the [Repair Act]."); Pasco, supra, 255 So. 3d at 417 (a repair shop's failure to comply with the estimate provisions of the Repair Act precluded it from recovering on its charges); Perez-Priego, supra, 633 So.2d at 1191 (under the Repair act, "a consumer who is not given a written estimate may recover the amount of the repair bill and still retain the benefit of the repairs"); FGAP Inv. Corp., supra, 325 So. 3d at 1008

("[w]here a motor vehicle repair shop fails to substantially comply with the provisions of the [Repair] Act, it may not enforce a lien to secure payment or proceed under a theory of implied contract.")[6]

Though these cases typically involved attempts by non-compliant repair shops to collect from "customers", as that term is (or was) defined in the Repair Act, the same result is warranted when an errant repair shop tries to collect from a non-"customer". See e.g. 1616 Sunrise Motors, Inc. (in precluding recovery by repair shop from car rental agency who had leased the vehicle to the "customer" who never provided authorization for the repairs, the Fourth District Court of Appeals held that: "under the circumstances of this case, the requirements of the [Repair Act] cannot be avoided by permitting recovery by the errant repair shop against an owner-lessor who may

[6] Throughout the course of this litigation, Defendants have cited to Lieberman v. Collision Specialists, Inc., 526 So. 2d 102 (Fla. 4th DCA 1987) and KT's Kar Kare, Inc. v. Laing, 617 So. 2d 325 (Fla. 4th DCA 1993), in which courts held that repair shops that were not in perfect compliance with the Repair Act's requirements nonetheless could collect on their charges. However, these cases are inapposite. In both instances, the repair shop was found to be in complete or substantial compliance with the Repair Act. Neither of these cases dealt with a situation like this one, where the record is clear that Defendants did not comply at all with various material provisions of the Repair Act, let alone "substantially comply".

not be a "customer" within the definition portion of the Act. The repair transaction involved herein is one that is covered by the Act. A holding to the contrary would undermine the purposes of the Act.") Id. (Emphasis added).

The conclusion that a repair shop's violations of the Repair Act preclude recovery from both the "customer" as well as a non-"customer" is consistent with this Court's jurisprudence in several respects. First, a contrary conclusion would be inconsistent with the principle that until a party complies with a statute's requirements, it has no right to payment. Diamond Aircraft Industries, Inc. v. Horowitch, 107 S0.2d 362 (Fla. 2013) illustrates this point. In that case, this court was faced with a certified question from the 11th Circuit as to whether attorneys could recover fees for litigating claims in an action originally brought under the FDUPTA, where the FDUTPA subsequently was determined to be inapplicable by the District Court because Arizonia's trade statute was applicable. The Defendant successfully defended the claim and then sought fees for the entire defense, including after the Court converted the claim. Acknowledging that the statute required the party to have prevailed on the FDUPTA claim to be eligible for counsel fees, the Court rejected

the Defendant's claim, noting that a contrary interpretation would render the qualifying event under the statute (i.e., the prevailing party requirement) meaningless. Id. at 371.

Similar principles are applicable here. When a repair shop such as Glassco intentionally does not comply with the requirements under the Repair Act, it is never authorized to even proceed with the work and, therefore, never acquires the right to payment from anyone. Notably, the Repair Act specifically requires that the repair shop comply with the statute even "before work is begun." See Fla. St. §559.905(3). As a result, repair work undertaken by Glassco without first complying with the statute was not legally permitted nor was it eligible for payment. It does not matter whether payment is sought from the insured or an insurer that has issued a policy containing comprehensive coverage. Any other conclusion would require this Court to disregard the fundamental pre-conditions to the performance of work and resulting payment established by §§ 559.905(1);(3) and would render the entire remedial aspect of the statute meaningless.

This result is also consistent with statutory construction principles which instruct that: (i) remedial statutes be liberally

construed in favor of grating access to the remedy provided by the legislature; and that (ii) limitations on remedial statutes be narrowly construed. See Golf Channel, supra, 752 So.2d at 566. Permitting recovery by a repair shop against an insured's insurer when the repair shop admittedly would have no right of recovery against the insured actually promotes conduct by repair shops inconsistent with the statute, rather than compliance with the statute, and flies in the face of the statute's fundamental purpose, i.e., honest disclosure and transparency by the repair shop before the work is even performed.

In this context, it should make no difference whether the repair shop seeks payment from the insured or a party who may be responsible to reimburse the insured. Legislative intent is the "polestar" and the interpretation of a remedial statute such as the Repair Act to allow a repair shop such as Glassco to collect on its charges notwithstanding its systemic violations of the statute is just the type of absurd result that would be created here. What is more, it would frustrate the purpose of the Repair Act if a shop could violate the Act by failing to provide any written estimate waivers or estimates, thereby prevent any "customer" from coming into existence, demand payment from an insurance company, and then

avoid the insurance company's Repair Act defense by contending that the insurer lacked standing to raise the Repair Act because it was not the "customer".

C. Contract Enforcement Principles Also Should Preclude Recovery by a Repair Shop That Violates Material Provisions of the Repair Act

The decisions precluding recovery by a non-compliant repair shop – even in quantum meruit, and even against a non-"customer" – make even more sense when viewed in the context of contract enforcement principles. As this Court has noted, courts will not "lend their aid toward enforcement of a contract which will further the violation of the law." Bruce's Juices, Inc. v. American Can Co., 155 Fla. 877, 883 (Fla. 1944); see also Hernandez v. Crespo, 211 So. 3d 19, 25 (Fla. 2016)("Contractual provisions which contravene a statute or legislative intent are injurious to the public good, violate public policy, and are therefore unenforceable.")

Here Glassco purported to obtain assignments of GEICO insureds' comprehensive insurance benefits (i.e., the right to reimbursement for windshield repairs), and then sought payment directly from GEICO in its capacity as an assignee. And yet, Glassco operated in violation of several material provisions of the Repair Act.

If Glassco or other repair shops could operate in pervasive violation of material provisions of the Repair Act, and then obtain payment as assignees of insurance benefits under insurance contracts, enforcement of the contracts would clearly "further the violation of" the Repair Act, "contravene" the legislative intent behind the Repair Act, and "violate public policy" underpinning the Repair Act.

Moreover, any such assignments would be worthless in the first place, and therefore would provide no basis for payment. For instance, where a repair shop violates the Repair Act, it loses the right to collect on its charges, even in quantum meruit, and the customer can still retain the benefit of the repairs. See, e.g., Osteen, supra; Perez-Priego, supra. In that setting, though an insured may assign to the repair shop his or her right to reimbursement for a windshield repair, there is – fundamentally – nothing to reimburse: The insured has no liability to pay anything for the repair and has simply assigned a valueless claim to the errant repair shop.

D. Equitable Principles Also Should Preclude Recovery by a Repair Shop That Violates Material Provisions of the Repair Act

More generally, it would be inequitable to permit a repair shop to collect on its charges from an insurance company, when its

violations of the Repair Act would preclude the shop from collecting from the insureds, themselves.

This is particularly true where, as in the present case, the repair shop's violations of the Repair Act prevented any "customer" – as that term is defined in the statute – from coming into existence, and then the Repair Shop proceeded to contend that only a "customer" had standing to seek relief under the remedial provisions of the statute.

In this context, and as discussed above, Florida courts have consistently held that a repair shop that operates in violation of the Repair Act may not collect on its charges, even in quantum meruit, and even from a non-"customer". In any case, however, to the extent that the Repair Act does not itself foreclose recovery by an errant repair shop, leaving insurers and the general public with no adequate remedy at law, then equity should preclude any such recovery. See, e.g., Ellis v. Dixie Highway Special Road & Bridge Dist., 138 So. 374 (Fla. 1931).

For these reasons, the Court should answer the Eleventh Circuit's second certified question in the affirmative.

II. The First Certified Question Should Also be Answered in the Affirmative

The Eleventh Circuit's first certified question asks a related but separate question - whether an insurance company can assert a direct cause of action under the Repair Act where, as in this case, a repair shop violates the Repair Act by failing to provide any written estimates, to anyone, and thereby prevents anyone from ever qualifying as a "customer" as that term is defined in the statute.

In this context, the Repair Act provides a private right of action to a "customer injured by a violation of this part". See Fla. Stat. § 559.921(1). The Repair Act also defines "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". See Fla. Stat. § 559.903(1). Put simply, the definition of "customer" assumes compliance with the statute.

However, the Defendants operated Glassco by systematically and intentionally violating the Repair Act by, among many other things, failing to provide any written estimates, to anyone, in connection with the claims they submitted through Glassco to

GEICO. See ECF Nos. 1, 125. Thus, and as GEICO has pointed out throughout this litigation, if the Repair Act's statutory definition of "customer" were to be narrowly construed in the manner adopted by the District Court, then no one would ever become a "customer", and have the right to seek relief for Glassco's violation of the Repair Act; because (i) a "customer" must be the person who signs the written estimate or his designee; and yet (ii) the Defendants – in violation of the Repair Act – never provided anyone with the requisite written estimates, and therefore never gave anyone the ability to sign any written estimates.

The federal District Court's dismissal of GEICO's Repair Act claim, reasoning that "no reasonable construction permits GEICO – an insurer – to sue as a 'customer' under the Repair Act", is inconsistent with this Court's jurisprudence on statutory construction for several reasons. See ECF No. 148. First, the District Court's application of the statute renders it meaningless because it allows a repair shop such as Glassco to avoid the effect of the Repair Act by actually violating the Repair Act, a conclusion contrary to this Court's jurisprudence. See Unruh v. State, 669 So.2d 242 (1996) (imposing affirmative obligation on law enforcement to provide

assistance to DUI arrestees to obtain independent blood tests absent no such requirement in the statute because absent that obligation the statute would be rendered useless); see also Sharer v. Hotel Corp. of America, 144 So. 2d 813, 817-818 (1962)(rejecting interpretation of workers compensation statute that created a benefit fund and simultaneously made the benefits unavailable: "It should never be presumed that the legislature intended to enact purposeless and therefore useless, legislation. Legislators are not children who build block playhouses for the purpose, and with the gleeful anticipation, of knocking them down. It would be the height of absurdity to assume that the legislature intentionally prescribed a formula which creates the need for a Special Disability Fund, and in the next breath deviously destroyed its own handiwork—thus making a mockery of the intended beneficent purpose of the Special Disability Fund itself.")

Second, and relatedly, the District Court improperly construed the Repair Act in the context of Glassco's intentional violation of the statute so that no one would ever have legal standing to seek redress

for Glassco's violations.[7] A statute that provides for a right of enforcement cannot logically be interpreted and applied to give no

[7] In particular, and as noted above, the District Court held that:

(i) Although the "definitions" section of the Repair Act defines "customer" to mean "the person who signs the written repair estimate", another section of the Repair Act, namely Fla. Stat. § 559.905, states that "[w]hen any customer requests a motor vehicle repair shop to perform repair work on a motor vehicle . . . the shop shall prepare a written repair estimate . . . "; and

(ii) "Although Section 559.903(1) defines 'customer' to mean the person 'who signs the written repair estimate,' the word 'customer' in the event of a repair shop's failure to furnish a written estimate permits one reasonable interpretation: the person who, under Section 559.905, 'requests a motor vehicle repair shop to perform repair work on a motor vehicle'"; and therefore

(iii) "Because the insured requests that Glassco repair the insured's motor vehicle, the insured – not GEICO – is the 'customer' under the Repair Act."

See ECF No. 148. This was erroneous as a matter of statutory interpretation. Section 559.905 does not define who is or is not a "customer" under the Repair Act. It simply states that, if someone who does meet the definition of a "customer" requests repair work, the repair shop is required to prepare a written estimate. The District Court's interpretation was simply flawed. See Curry v. Lehman, 47 So. 18, 21 (Fla. 1908)("An interpretation of a statute, however, which must lead to consequences which are mischievous and absurd, is inadmissible if the statute is susceptible of another interpretation by which such consequences can be avoided. For this purpose, all parts of a statute are to be read and compared.")

one standing to enforce a violation. In this context where GEICO stands in the shoes of its insured and is therefore the only party that is subject to actual injury based on Defendants' violations, it should logically be the party who has the right to seek redress for those violations of the statute. See Girard Trust Co. v. Tampashores Development Co., 117 So. 786, 788 (Fla. 1928) ("If a statute grants a right or imposes a duty, it also confers, by implication, every particular power necessary for the exercise of the one or the performance of the other. … (internal citation omitted) 'Where a statute requires an act to be done for the benefit of another or forbids the doing of an act which may be to his injury, though no action be given in express terms by the statute for the omission or commission, the general rule of law is that the party injured should have an action; for, where a statute gives a right, there, although in express terms it has not given a remedy, the remedy which by law is properly applicable to that right follows as an incident.'")

Third, to the extent that the District Court found that GEICO's insureds qualified as "customers" who had standing to assert a direct claim under the Repair Act, despite never signing any written estimates, either, it likewise should have found that GEICO assumed

the insureds' right to sue under the Repair Act once it paid Glassco's claims. See, e.g., Fayad v. Clarendon Nat'l Ins. Co., 899 So. 2d 1082, 1086 (Fla. 2005)("As a general rule, an insurer which has paid its insured's claim or loss becomes subrogated to the insured's cause of action against the tortfeasor and may file suit to recover the amount paid.")(Internal quotations and citation omitted).

The Legislature clearly intended to prohibit repair shops from being rewarded for the exact conduct in which Glassco engaged here, not to reward or insulate them. But that is exactly what the District Court did – it not only excused Glassco's violations, but actually allowed Glassco to recover funds for windshield repairs the court itself assumed were performed in violation of the Act.

Glassco argues that its violations can be ignored because this case involves an insurance company. See ECF No. 129. But Florida law prohibits charging insureds deductibles for windshield repairs, which means that the overwhelming majority of windshield repairs involve insurance companies. See Fla. Stat. §627.7288. Thus, as a practical matter, the District Court's interpretation of the Repair Act renders the private right of action effectively impotent. As noted above, the Legislature enacted the Repair Act against the backdrop

of what is now more than forty years of requiring no-deductible comprehensive coverage for windshield glass repairs/replacements. Because the Legislature is presumed to have known the state of Florida's existing law when it passed the Repair Act (see Seagrave v. State, 802 So.2d 281, 290 (Fla. 2001)), the Legislature could not have intended the Repair Act to create the absurd result of an unenforceable remedial statute when the vehicle owner carries Florida comprehensive coverage, which requires no-deductible coverage for windshield glass repair or replacement.

In reaching its determination, the District Court did indicate that under Section 559.921(2), GEICO could complain to the Florida Department of Agricultural & Consumer Services (the "FDACS") about Glassco's non-compliance with the Repair Act. See ECF No. 148. Under Section 559.921(4), the District Court noted that the FDACS was authorized to impose a civil penalty, including a fine, enter an injunction against certain activity, and revoke the repair shop's registration. Id. (citing Fla. Stat. §§559.903(3); 559.921(2); 559.921(4)). Thus, the District Court reasoned that the existence of "an administrative remedy" provided adequate legal relief to GEICO

and "further confirm[ed] that the Repair Act restricts the private right of action to the customer only." Id.

The District Court's reasoning is erroneous as it essentially reforms the Repair Act into a statute that does not establish civil liability. The converse proposition has been recognized by this Court, i.e. a statute that does not establish civil liability but merely makes provision to secure the safety and welfare as a public as an entity does not establish civil liability. See, e.g Murthy v. N. Sinha Corp., 644 So.2d 983, 986 (Fla. 1994). It logically follows that where civil liability exists under a statute, the fact that an administrative remedy may also exist cannot be read to insulate a party from civil responsibility for its own statutory violations. This is true, especially whereas here, the administrative remedy does not adequately protect the party actually injured. Notably, submitting a complaint to the FDACS does not provide GEICO with any legal remedy because complaining to the FDACS does not: (i) allow GEICO to recover from Defendants the money it paid; (ii) prevent GEICO from being held liable to reimburse Glassco for Glass Services provided in violation of the Repair Act; or (iii) prevent Glassco from suing GEICO and causing

GEICO to incur significant legal fees in relation to the defense of claims that were not eligible for payment in the first place.

Because the District Court's orders create exceptions to the Repair Act that completely negate its intended application, the District Court's interpretation of the Act was incorrect, and the First Certified Question should also be answered in the affirmative.

CONCLUSION

For the reasons set forth herein, the Eleventh Circuit's certified questions should be answered in the affirmative.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on December 20, 2023, a true and correct copy of the foregoing was filed with the of court via the Florida Courts E-Filing Portal, which will send a link to counsel of record via electronic mail as directed below:

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CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY that this computer-generated brief is printed in Bookman Old Style 14-point font, and further complies with the applicable font and formatting requirements of Rule 9.045, Florida Rules of Appellate Procedure. I further certify that the word count for the foregoing brief is 12,792, as indicated by the word count of the word-processing system used to prepare this document, and complies with the word count limits of Rule 9.210(a)(2)(B), Florida Rules of Appellate Procedure, in that it does not exceed 13,000 words (excluding the words in any caption, cover page, table of contents, table of citations, certificate of compliance, certificate of service, and signature block).

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