

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

CASE NO.: 6:16-cv-00924-orl-PGB-KRS

ERIN JOYNT,

Plaintiff,

vs.

VOLUSIA COUNTY, a Political
subdivision of the State of Florida,
and STAR INSURANCE COMPANY,
a foreign corporation,

Defendants.

PLAINTIFF'S DISPOSITIVE MOTION FOR FINAL SUMMARY JUDGMENT

The Plaintiff, ERIN JOYNT, by and through her undersigned counsel, hereby files Plaintiff's Dispositive Motion for Summary Judgment against the Defendants, VOLUSIA COUNTY and STAR INSURANCE COMPANY, pursuant to Rule 56, Fed.R.Civ.P. In support of this Motion Plaintiff states as follows:

INTRODUCTION

1. This is Plaintiff's Motion for Summary Judgment against Defendants Star Insurance Company and Volusia County, seeking a judgment as a matter of law in this action for declaratory relief filed pursuant to Chapter 86, Florida Statutes.

2. When considering the plain language of the Public Excess Entity Liability Insurance (hereinafter "Policy") drafted by Star Insurance Company (hereinafter "Star") and issued to Volusia County, no genuine issue of material fact exists regarding Star's existing obligations under which Plaintiff Erin Joynt is a third-party beneficiary.

3. Under the policy of insurance at issue, Star's obligation to pay the Final Judgment obtained by Erin Joynt and assessed against Volusia County was triggered immediately following a lawful jury verdict, judgment and subsequent payment by Volusia County of their self-insured retention obligations under the Policy.

4. The ultimate purpose of this motion is to determine if Star has the continued discretion under the insurance Policy or at law, to continue to: (1) refuse to pay the valid jury verdict and final judgment entered in the underlying case, and (2) arbitrarily require extra-contractual legislative intervention in the form of a claims bill when such a requirement is not referenced in Star's contract with Volusia County or required under §768.28(5).

5. Neither Star's Policy, nor Florida law permit Star's exercise of arbitrary discretion under the facts of this case. As such, Plaintiff requests this Honorable Court to find as a matter of law that Defendant Star Insurance Company is required to pay Erin Joynt the \$1,915,000.00 remaining balance of her Final Judgment against Volusia County, plus applicable statutory interest, costs, attorneys' fees, and any additional remedy this honorable court and the trial court deem appropriate.

SUMMARY JUDGMENT STANDARD

6. Granting a motion for summary judgment is proper if the moving party "shows that there is no genuine dispute as to any material fact." Fed. R. Civ. P. 56(a). A dispute of material fact exists "if the evidence is such that a reasonable jury could return a verdict for the nonmoving party." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). Once the moving party meets this burden, "[t]he burden then shifts to the non-moving party, who must go beyond the pleadings and present affirmative evidence to show that a genuine issue of material fact

exists.” *Porter v. Ray*, 461 F.3d 1315, 1320 (11th Cir. 2006) (citing *Fitzpatrick v. City of Atlanta*, 2 F.3d 1112, 1115–17 (11th Cir. 1993)).

FACTUAL BACKGROUND

7. On July 31, 2011, Plaintiff Erin Joynt and her family drove through the night from their home in Kansas to relax on the self-proclaimed “World Famous” beaches of Volusia County, Florida. Without warning, a vehicle driven by Thomas Moderie, a Volusia County employee, ran her over.

8. As a result, Erin Joynt suffered significant injuries and ultimately filed a negligence action against Volusia County in Florida’s Seventh Judicial Circuit.

9. Despite the sovereign immunity caps under Section §768.28, Florida Statutes, Volusia County (by and through Star Insurance) served the following Proposals for Settlement under FRCP 1.442 and Section 768.79, Florida Statutes:

- a. Defendant’s Proposal for Settlement to Plaintiff, Anthony Joynt (by and through Erin Joynt or Chris Joynt); \$2,000.00 (Two Thousand Dollars) on February 18, 2014. This was rejected. A settlement was negotiated for \$7,500.00. See Exhibit “A.”
- b. Defendant’s Proposal for Settlement to Plaintiff, Hannah Joynt (by and through Erin Joynt or Chris Joynt); \$2,000.00 (Two Thousand Dollars) on February 18, 2014. This was rejected. A settlement was negotiated for \$7,500.00. See Exhibit “B.”
- c. Defendant’s Proposal for Settlement to Plaintiff, Chris Joynt; \$134,000.00 (One Hundred Thirty Four Thousand Dollars) on February 18, 2014. This was accepted. See Exhibit “C.”

d. Defendant's Proposal for Settlement to Plaintiff, Erin Joynt; \$134,000.00 (One Hundred Thirty Four Thousand Dollars) on February 18, 2014. This was rejected. See Exhibit "D."

10. Plaintiff served Proposals for Settlement of her own, which were rejected.

11. On June 27, 2014, after a week-long trial on causation and damages, a Volusia County jury awarded Plaintiff Erin Joynt \$2,600,000.00 in damages.

12. On August 18, 2014, the trial Court entered a Final Judgment against Volusia County for the full \$2,600,000.00 and reserved jurisdiction to amend the judgment at a later date to award attorneys' fees and costs of the underlying action.

13. The underlying tort action was appealed by Volusia County resulting in the Judgment being lessened to \$2,000,000.00 by Order of the trial court on January 12, 2016.

14. A Final Judgment was issued on August 14, 2014. Volusia County paid Erin Joynt \$85,000.00.

15. Subsequent thereto, Star Insurance reimbursed Volusia County for fees and costs in the amount of \$137,714.04.

STAR'S POLICY FOR PUBLIC EXCESS ENTITY LIABILITY INSURANCE

16. The Policy issued by Star provided coverage to Volusia County from October 1, 2010 to October 1, 2011. Volusia County paid \$525,200.00 taxpayer dollars annually for this coverage.

17. Star's Policy provided excess automobile insurance coverage for vehicles owned by Volusia County, including the vehicle involved in the underlying automobile accident. A true and correct copy of the Star Policy is attached hereto as Exhibit "E" and is expressly incorporated herein.

18. The coverages provided under the Excess Policy are as listed in the “General Endorsement,” labeled SNS GEN 1, which is a chart that states as follows:

Coverage	Limits of Liability	Self-Insured Retention
General Liability Auto Liability Employees Benefits Liability Public Officials Liability other than F.S. 768.28	\$5 Million each occ. \$15 Million aggregate	\$250,000 each occ
Same Coverages as above for f.s. 768.28	Included above	\$100,000 per person \$200,000 per occurrence
Worker’s Compensation	Statutory	\$400,000 per occurrence

19. Plaintiff will now establish affirmative proof that: (1) the benefits provided to Volusia County and its third-party beneficiaries have been due under this Policy since the exhaustion of the Self-Insured Retention (hereinafter “SIR”); (2) the plain language of the Policy requires payment to Erin Joynt; (3) the clear reading of §768.28 require payment forthwith; (4) payment is due under the analysis of the 11th Circuit Court of Appeals in *Hillsborough County v. Star Ins. Co.*; (5) Star, as a private insurance company, is attempting to substantively use the sovereign immunity shield afforded to Volusia County for their own financial benefit and cannot; (6) Star has ignored its duty of good faith to evaluate settlement proposals by repeatedly and arbitrarily rejecting reasonable settlement offers and the mandate of its policyholders - the people of Volusia County who were represented by the very jury in this cause; and (7) in addition to the practical impossibility of getting a claims bill passed, there is no language contained within the Policy that states that Star is even contractually obligated to pay a claims bill if one was passed on her behalf, creating not only an illusory obligation, but an impossibly vague series of hurdles which are unjust and improper.

**VOLUSIA COUNTY HAS FULFILLED ITS SELF-INSURED RETENTION
OBLIGATIONS UNDER THE POLICY**

20. Under Star's Excess Policy, Volusia County's payment of its self-insured retention obligations is a condition precedent to triggering Star's obligation to pay any claims made against the Policy. The Policy states in pertinent part:

"In consideration of the premium charged and as a condition to the issuance and continuation of the policy, it is agreed that the Named Insured shall retain and pay from its own funds as a self-insured retention, per each "occurrence", accident', offense or 'Wrongful Act' in the sum of \$as per general endorsement SNS GEN 01 in accordance with and in acceptance of all the terms of this endorsement."

21. As stated in the Policy, any payment made by Volusia County for "insured damages and insured allocated costs and expenses of investigation, defense, negotiation and settlement applicable to such insured damages"¹ apply towards Volusia County's SIR obligation.

22. Star's coverage is "solely in excess of the Named Insured's self-insured retention." [SNS 1010] In other words, Star's obligation to pay Erin Joynt's Amended Final Judgment under the policy is triggered only after Volusia County fully paid its obligations under the SIR.²

23. As shown in the "General Endorsement" chart above, the Excess Policy issued to Volusia County provides two kinds of coverage – coverage for claims that are subject to the sovereign immunity cap pursuant to §768.28 and coverage for those that are not.

24. For coverage provided against general liability, auto liability, employees benefit liability or public officials liability: **other than F.S. 768.28,**" Volusia County's SIR obligation is \$250,000.00 each occurrence.

¹ *Self-Insured Retention Endorsement (Expense Included SIR)* p. 1

² "Unlike with a deductible, the insurer is not liable until the insured has paid the whole of its SIR." *State Nat'l Ins. Co. v. Lamberti*, 362 F. App'x 76, 78 n.2 (11th Cir. 2010)

25. However, for coverage provided against general liability, auto liability, employee benefits liability, and public official liability “for f.s. §768.28,” Volusia County’s SIR obligation is **\$100,000 per person or \$200,000 per occurrence.**

26. It is undisputed that Volusia County is a sovereign entity as defined by Florida Statute §768.28. Erin Joynt was injured by an employee of Volusia County who was operating a county owned vehicle within the course and scope of his employment with Volusia County. All claims brought forth by Erin Joynt in the underlying negligence action were subject to sovereign immunity set forth in §768.28(5).³ See Exhibit “F.”

27. Based on the “General Endorsement” for Erin Joynt’s claim, Volusia County is required to pay \$100,000.00 per person or \$200,000.00 per occurrence under their SIR obligation, prior to triggering Star’s excess coverage provided in the Policy.

28. As of its payment of \$85,000.00 to Erin Joynt on June 25, 2015, Volusia County paid \$234,000.00 in settlement and judgment payments alone and has thus satisfied their \$200,000.00 per occurrence SIR obligations for Erin Joynt’s claims that were brought pursuant to Florida Statutes §768.28(5). A copy of these settlement checks for Erin Joynt and Chris Joynt are attached hereto as Exhibit “G.”

29. Erin Joynt did not bring any claim against Volusia County other than those subject to §768.28.

30. Star may argue that Volusia County was required to meet the \$250,000.00 SIR to avoid triggering their obligation to pay Erin Joynt the \$1,950,000.00 remaining balance of her Final Judgment. We would disagree on the plain language thereof, but also contend that that SIR has also been met in this action.

³ Volusia County paid \$134,000.00 to Chris Joynt, \$7,500.00 on behalf of minor Hannah Joynt, \$7,500.00 on behalf of minor Anthony Joynt, and \$85,000.00 to Erin Joynt.

31. As shown in the “General Endorsement” chart above, the \$250,000.00 per occurrence SIR obligation applies to claims brought against Volusia County under “general liability, auto liability, employees benefit liability or public officials liability **other than F.S 768.28.**”

32. Presumably, the “other than” language means that the \$250,000.00 SIR would apply to cases where §768.28 is not applicable, such as federal civil rights cases, contractual disputes, workers compensation, or claims where the loss occurs outside of Florida. Erin Joynt did not bring any of these types of claims against Volusia County and therefore the \$250,000.00 SIR does not apply to this case.

33. If however, this court determines that Volusia County was obligated to pay the \$250,000.00 per occurrence SIR, Volusia County has still met the SIR requirement. In addition to the \$234,000.00 in settlements and judgments paid, Volusia County has paid at least \$63,637.50 as costs in defending Erin Joynt’s lawsuit. As such, Volusia County has fully satisfied their obligations even under the \$250,000.00 SIR by paying a total of \$297,637.50. A complete list of checks written by Volusia County regarding Erin Joynt’s claim is attached hereto as Exhibit “H.”

34. To further solidify the fact that Volusia County has met their SIR obligations under the policy, on November 17, 2015, Star issued a check to Volusia County for \$137,714.04. See Exhibit “I.” The email attached thereto references that it is a reimbursement by Star to Volusia County. There is no obligation under which Star would issue Volusia County a check under its “Excess Policy” without the SIR having been met.⁴

⁴ We intended to undergo discovery on this issue and Star objected to all interrogatories and requests for production, citing its opinion that discovery was not necessary in this case.

UNDER THE PLAIN LANGUAGE OF THE POLICY, STAR INSURANCE COMPANY IS REQUIRED TO PAY THE JUDGMENT WITHIN ITS LIMITS OF INSURANCE WITHOUT A CLAIMS BILL

35. The Policy provides: “[STAR] will pay all sums an “insured” legally must pay as damages because of ‘bodily injury’ or ‘property damage’ to which this insurance applies, caused by an ‘accident’ and resulting from the ownership, maintenance or use of a covered ‘auto’... Our duty to defend or settle ends when the Liability Coverage Limit of Insurance has been exhausted by payment of **judgments or settlements.**” (Emphasis added) See Exhibit “A,” Section II (A), pg. 2 of 11.

36. The seventy-eight page insurance policy drafted and issued by Star makes no mention of the words “claims bill.” The Policy does however repeatedly use the terms “judgment” and “settlements”.⁵

37. In fact, the “Business Auto Coverage Form” issued by Star was copyrighted in 1993 and bears a form number CA 00 01 12 93. In 1993, when this policy was drafted, there was no interplay between the legislative process and insurance of sovereign entities.⁶

38. Star now seemingly arbitrarily argues that it has no obligation to pay the Amended Final Judgment Erin Joynt obtained against Volusia County for any amount in excess of the sovereign immunity cap, unless and until three conditions are met: (1) Judgment is

⁵ Policy p. 2, “Our duty to defend or settle ends when the Liability Coverage Limit of Insurance has been exhausted by payment of *judgments or settlements*. Policy p. 3 “In addition to the Limit of Insurance, we will pay for the ‘insured’... All interest on the full amount of any *judgment* that accrues after entry of the judgment in any ‘suit’ we defend.” Policy p. 8, “Under Liability Coverage, we agree in writing that the ‘insured’ has an obligation to pay or until the amount of that obligation has finally been determined by *judgment* after trial. Policy p. 1, “Our right and duty to defend end when we have used up the applicable limit of insurance in the payment of *judgments or settlements.*”

⁶ Under the 1993 form of 768.28, Sovereign entities were deemed to have waived sovereign immunity up to the amount of insurance purchased.

rendered against Volusia County in excess of its sovereign immunity limits; (2) Volusia County satisfies their contractual SIR obligations and; (3) a **claims bill** is passed.

39. However, Star's Policy expressly lists only two conditions that must be met prior to triggering Star's obligations to pay. First, Erin Joynt must obtain a "judgment" or "settlement" against Volusia County. Second, Volusia County must satisfy their SIR requirement.

40. It is undisputed that Erin Joynt has obtained an Amended Final Judgment against Star's insured, Volusia County, for \$2,000,000.00. See Exhibit "J."

41. In addition, as previously established, Volusia County has fulfilled its SIR obligations under the insurance Policy.

42. Despite both enumerated policy conditions being met, Star is attempting, post-judgment, to bind Erin Joynt to a legal fiction that she must obtain a claims bill prior to triggering Star's obligation to pay the Final Judgment. However, there is no language within Star's Policy that remotely states a claims bill is a condition precedent to triggering Star's obligation to pay and that requirement did not exist when the very policy was drafted.⁷ Most importantly, the words "claims bill" are completely omitted from Star's Policy.

43. Star is attempting to include an additional extra-contractual requirement of a claims bill to arbitrarily expand the shield of sovereign immunity enjoyed by Volusia County for Star's own private benefit. However, under Florida Law, Star is not entitled to the same protections afforded to Volusia County as, "[T]he claims bill procedure was intended only as a means of securing additional recovery *directly* against the government, rather than a third-party, such as a liability insurer or insurance agent. Indeed, no claims bill [is] necessarily in excess

⁷ In 1993, when the Policy was drafted, under §768.28, a Sovereign Immunity was waived up to the amount of insurance coverage.

insurance [is] purchased...” (emphasis added) Martin v. Nat’l Union Fire Ins. Co., 616 So.2d 1143, 1145 (Fla. 4th DCA 1993).

44. Star’s unwavering position of forcing Erin Joynt to obtain an extra-contractual claims bill has frustrated any post-judgment settlement negotiations between Erin Joynt and Volusia County and has delayed justice for Erin Joynt for over two years.

45. Star’s interpretation, without even spelling it out to Ms. Joynt or it being coherent in the Policy, would require Erin Joynt to not only successfully obtain a jury verdict and successful appeal (which she did), but have a separate trial, de novo, in the legislature and then attempt to negotiate (also de novo) the legislative findings of two Special Masters of the Florida House and Senate through six separate committees and a floor vote and through a possible executive branch veto. These acts are unanticipated and unmentioned in the policy of insurance and unconscionable.

46. It is a process which even frustrates and confuses the Legislature. At a recent committee hearing where Erin Joynt’s claims bill was voted down, Representative Shawn Harrison said:

“I want to thank Plaintiff’s counsel in this case for filing the dec action, because that is going to answer a question that we continue to keep wrestling with. And there’s one thing that everybody at this table agrees with, bipartisan. This is the most bipartisan agreement that we have. The claims process in Florida is ridiculous and we need clarification or else this body needs to decide we’re going to clarify it ourselves.

But right now we have a pending Federal dec action it’s going to be resolved in about 6 months that would help us answer that question. That dec action was filed for the purpose of determining whether or not they had to come here on a claims bill because they had an insurance policy that didn’t require state involvement in the claims process.

So if that question is answered in the affirmative, that they (Plaintiff’s) never had to come to this process, we will then have some have some guidance if we come

back next session and say, 'We can now safely say that whenever there's an insurance policy out there - paid for by a municipality or county - that covers the sorts of things, you don't have to come to the claims bill process.' Yay for us. I mean, wouldn't that finality be great?

Normally I would take the position that - I agree with my esteemed colleague to the west of me Representative Grant - that, you know, let's keep this ball moving because it keeps everybody in a posture trying to resolve it, but we're only 6 months away from having a definitive answer and guidance for us in the future. So, because of that sort of unique posture we find ourselves in, I'm going to vote no on the bill. I want to hear what the feds have say about it and then we can come back and try to fix this process in the future."

Rep Shawn Harrison, 1/10/18 House Civil Justice & Claims Subcommittee, <https://thefloridachannel.org/videos/1-10-18-house-civil-justice-claims-subcommittee/> (January 10, 2018).

47. Concurrently, Star Insurance has fought the passing of a claims bill in the Legislature and has hired lobbyists to vastly reduce its exposure – another series of acts un contemplated and unmentioned in the policy of insurance.

48. Speaking out of both sides of its mouth and making the rules up as it goes along, Star offered Erin Joynt \$600,000.00 - a far cry from the \$1,915,000.00 plus fees and costs she is owed. See Exhibit "K." This is a money saving effort for Star's bottom line by subterfuge.

49. In addition, Star's position has forced Volusia County to use at three or four of its own lawyers and expend vast sums of money in defending this action through trial, appeal, declaratory action and two unsuccessful claims bill attempts put forth by Erin Joynt and has simply wasted legislative time and resources in doing so.

STAR'S EXTRA-CONTRACTUAL REQUIREMENT OF OBTAINING A CLAIMS BILL IS CONTRARY TO FLORIDA STATUTE §768.28(5)

50. As stated above, Star has taken the extra-contractual position that Volusia County, and by extension Star, are shielded by sovereign immunity and therefore not "legally required to pay" another cent of the judgment unless and until a claims bill is passed by the Florida

Legislature. As such, Star has used terms contained within the Policy to derail any attempted post-judgment negotiations between Erin Joynt and Volusia County. As a reminder these terms were drafted in 1993 when the process was entirely different.

51. Star relies upon two pertinent Policy provisions which provide:

DUTIES IN THE EVENT OF ACCIDENT, CLAIM, SUIT OR LOSS

b. Additionally, you and any other involved “insured” must:

(1) **Assume no obligation, make no payment or incur no expense without our consent**, except at the “insured’s” own cost.

(3) Cooperate with us in the investigation, settlement or defense of the claim or “suit”.

See Exhibit “A,” Section IV- BUSINESS AUTO CONDITIONS, pg. 7-8 of 11(emphasis added)

52. Star broadly interprets this policy language to mean that it is the gatekeepers for any settlement negotiations between Volusia County and Erin Joynt. Star’s interpretation allows Volusia County to negotiate with Erin Joynt if and only if Star provides its consent.

53. Prior to the underlying trial, Star’s interpretation of these provisions forced Volusia County to incur the expenses of trying this case, hiring experts, and have forced the expenditure of a tremendous amount of judicial resources that could have been avoided with acceptance of either of Erin Joynt’s offers to settle this case prior to the underlying trial, both of which were well within the policy limits of the Star Policy. In fact, one proposal was far less than the ultimate verdict.

54. Volusia County, who currently has a \$2,000,000.00 Amended Final Judgment against it, cannot settle and must do Star’s bidding or face a declaratory action seeking to invalidate coverage. As a result, Volusia County loses tourist dollars and faces periodic media scrutiny simply because Star wants a better deal than Volusia County’s own taxpayers mandated.

55. Presumably, Star will never “consent” to a post-judgment settlement between Erin Joynt and Volusia County without the passage of claims bill, as doing so would be at their own financial detriment. Making matters worse, there is no contractual guarantee which obligates Star to even pay a claims bill, as same is never reference in the Policy.

56. The “consent” language within the Policy and relied upon by Star is in direct contravention to §768.28(5) Florida Statutes, which states in pertinent part:

“ . . . Notwithstanding the limited waiver of sovereign immunity provided herein, the state or an agency or subdivision thereof may agree, within limits of insurance coverage provided, to settle a claim made or a judgment rendered against it without further action by the Legislature.” Fla. Stat. §768.28(5)(emphasis added).

57. Under §768.28(5) Florida Statutes, Volusia County has the statutory authority to agree, within the limits of insurance coverage provided, to settle a claim or judgment rendered against it without having to expend the resources, devote the money, and divert the man hours of defending itself during an extra-contractual claims bill process.

58. However, Star, as the self-proclaimed gatekeeper, contends that under the “consent” language of the Policy, Volusia County is barred from negotiating Erin Joynt’s claim without Star’s approval. Star is overreaching and hamstringing Volusia County from settling with Erin Joynt which is contrary to express authority granted under §768.28(5) Florida Statutes. In other words, §768.28(5) expressly makes Volusia County the gatekeeper to settlement negotiations, not Star. Volusia County taxpayers have spoken - loudly.

59. To be clear, Erin Joynt is not claiming that Star, a private insurance company, must be bound to pay any arbitrary self-assessed settlement that Volusia County wishes to accept in all circumstances. Such an overbroad ruling would put Star in the position of having to pay settlements out of its own pockets that may not meet the fairness of a trial. Rather, Erin Joynt is

claiming that Star cannot act as a roadblock to a valid jury verdict and post-judgment negotiations between Volusia County and Erin Joynt or a jury verdict rendered by Volusia County's own taxpayers.

60. While Volusia County attorneys may be afraid to speak under the language of its Policy, the actual policy holders, Volusia County taxpayers, were not so afraid. In fact, they were legally obligated to speak. They spoke by their jury verdict. See Exhibit "L." By doing so, these six men and women of Volusia County bound Star under §768.28. They agree(d) within limits of insurance coverage provided, to settle a claim made." They caused "(A) judgment (to be) rendered against (Volusia County) without further action by the Legislature." Fla. Stat. §768.28(5).

**PAYMENT IS DUE UNDER THE 11TH CIRCUIT HOLDING IN
HILLSBOROUGH COUNTY V. STAR INS. CO.**

61. A similar issue was discussed in *Hillsborough County v. Star Ins. Co.*, 847 F. 3d 1296 (11th Cir. 2017).

62. In *Hillsborough*, a widower filed a wrongful death lawsuit against Hillsborough County after his wife was killed due to the negligence of a county employee. **Prior to and instead of trial**, the Plaintiff and Hillsborough County reached a "proposed settlement" of \$2,350,000.00. Star, the county's excess insurance carrier in that case as well, objected to the proposed settlement between the widower and Hillsborough County and the widower filed a declaratory relief action.

63. Under the terms of the proposed agreement between Hillsborough and the Plaintiff, the County would pay \$200,000.00 out of its self-insurance general liability fund; an

additional \$150,000.00 would be paid by the County, if approved by the Legislature in a claims bill; and Star would pay \$2,000,000.00.

64. Star objected to this proposed settlement and claimed that Hillsborough County could not unilaterally settle the claim without Star's consent. Star argued that it was not obligated to pay the settlement for two reasons: (1) Hillsborough County had not satisfied their \$350,000.00 SIR obligations under the policy, and therefore Star's coverage had not been triggered; and (2) Star disagreed with the reasonableness of the pre-trial settlement arrangement because liability was contested and damages were not then established.

65. Unlike in the present case, Hillsborough County had an unmet \$350,000.00 SIR obligation prior to triggering Star's obligation to pay. As such, Star argued that as a matter of law, the SIR could not legally be met without the passage of a claims bill, as the most Hillsborough County could have paid under §768.28 was \$200,000.00.

66. Under the specific facts of *Hillsborough*, the court agreed with Star and held that the \$350,000.00 SIR obligation under the policy could not be met without the passage of a claims bill to fill the "gap" because Hillsborough was legislatively capped at paying \$200,000.00 for towards their SIR.

67. The *Hillsborough* case differs from the present case in two distinct and material ways: 1) In the present case, Volusia County has fulfilled their SIR obligation, and 2) Erin Joynt's damages and Volusia County's liability have been determined by a jury of Volusia County taxpayers and affirmed on appeal.

68. Despite these differences, *Hillsborough* provides guidance in the present matter. During their analysis in *Hillsborough*, the court stated, "Both the County and Star knew (or should have known) that, in 2009 and 2010, §768.28(5) established a sovereign immunity cap of

\$200,000.00 for municipalities and other governmental entities. And both the County and Star knew that the \$350,000.00 SIR exceeded the \$200,000.00 sovereign immunity cap.” *Id.* at p. 1305.

69. In the present case, both Volusia County and Star knew that in 2010, §768.28(5) established a sovereign immunity cap of \$200,000.00. And both Star and Volusia County knew that the \$200,000.00 SIR requirement of the policy could be met without further legislative involvement.

70. Had Star intended on the requirement of a claims bill prior to triggering their obligations under the policy, Star would have presumably set Volusia County’s SIR obligation at a number higher than \$200,000.00. Star did not.

71. Furthermore, Erin Joynt’s damages have been determined by a Volusia County jury and affirmed on appeal. Unlike *Hillsborough*, Star cannot argue that Erin Joynt’s damages and Volusia County’s negligence have not been established. The jury has spoken, Star just refuses to listen.

**ALLOWING STAR TO SUBSTANTIALLY USE THE SHIELD OF SOVEREIGN IMMUNITY
FOR ITS OWN FINANCIAL PROTECTION VIOLATES PUBLIC POLICY**

72. To construe the Policy language drafted by Star Insurance Company, “[w]e will pay all sums an ‘insured’ legally must pay as damages because of ‘bodily injury’ or ‘property damage’ to which this insurance applies” to add an unexpressed requirement and thus mandate a claims bill would be overreaching, and be completely against public policy.

73. Erin Joynt is a direct third party beneficiary of the Policy purchased by Volusia County and issued by Star as is contemplated in the aforementioned policy language.

74. Nevertheless, Star apparently contends that Volusia County is exempt from paying the Final Judgment without the passage of a claims bill. Therefore, under the “legally must pay” language of the policy, Star is not responsible for paying Ms. Joynt’s Final Judgment without the passage of a claims bill either.

75. However, as stated above, unlike *Hillsborough*, Volusia County has already fulfilled their SIR obligation under the policy. This is significant because even if a claims bill is passed by the Legislature, Volusia County will not be responsible for another penny because they have met their SIR obligations under the Policy. Star is on the hook for the remainder of Erin Joynt’s judgment, not Volusia County.

76. In the off chance the Florida Legislature passes Erin Joynt’s claims bill, the bill would have the practical effect of forcing Star, a private insurance company, to pay Erin Joynt, a private individual. Such an effect was never intended by the Legislature. The claims bill process is a mechanism designed to allow the Florida Legislature to mandate that a sovereign entity pay out of its own pocket for judgments rendered against them in excess of the statutory cap of \$200,000.00.⁸

77. Star, as a private insurance company, is attempting to substantively use the sovereign immunity shield afforded to Volusia County for their own financial benefit. This precise issue arose in *Michigan Millers Mut. Ins. Co. v. Bourke*, So.2d 418 (Fla. 1992), in which the court held, “section 768.28 authorizes the rendition of a judgment in excess of the amount the *State can be required to pay* due to sovereign immunity. Furthermore, the legislature has determined that, in addition to allowing discretionary recovery through a legislative claims bill,

⁸ “Sovereign immunity protects the state from burdensome interference from the performance of its governmental functions and preserves its control over state funds, property and instrumentalities.” *Davis v. State Dep’t of Corr.*, 460 So.2d 452, 461 (Fla. 1st DCA 1984).

the limits of the sovereign immunity statute may be exceeded when insurance coverage is available. We find that *the immunity defense available under section 768.28 is not absolute within the meaning of the term “legally entitled to recover” so as to allow such a defense to be raised substantively by an insurance carrier.*” *Id.* at 422.

78. Volusia County purchased this Excess Policy from Star Insurance Company to protect themselves and its citizens in the event the County is found negligent. Star’s nonpayment of Erin Joynt’s Amended Final Judgment violates the legislative intent behind allowing sovereign entities to purchase insurance through private insurance companies for the protection of its citizens. In *Everton v. Willard*, 468 So.2d 936 (Fla. 1985), the Florida Supreme held, “The legislature has acted to encourage the purchase of liability insurance, or self-insurance, by governmental entities and to ensure that the governmental entities and their tort victims receive the full benefit of the premiums paid and the coverage obtained on such insurance contracts.”

79. Star’s attempt to manipulate the “legally must pay” language of the policy to invoke §768.28(5) Florida Statutes as a private shield for their own financial benefit is contrary to the legislative intent of §768.28 Florida Statutes, Florida common law, and it violates Public Policy. It is also a redefining the language written in 1993 to an entirely different definition than it was originally intended.

**STARS NON-PAYMENT OF ERIN JOYNT’S JUDGMENT VIOLATES THEIR
OBLIGATION TO OPERATE IN GOOD FAITH TOWARDS ITS INSURED**

80. Star simply refuses to pay Erin Joynt’s Final Judgment without a claims bill. Star’s refusal to pay has prohibited both Erin Joynt and Volusia County from resolving this injury case that has been tried, appealed, and has been dragging on for over seven years.

81. In addition to Volusia County's jurors ordering Star to pay with its verdict, even Volusia County's own trial attorney stated after the verdict, "We respect the jury's verdict," attorney Nancye Jones told reporters outside the courtroom. "We wish her well."

82. She's not well. The process is not fair. Star's delay amounts to nothing short of an exploitation of more hurdles through the political, vague and hazardous legislative claims bill process in hopes the Legislature may reduce the judgment amount and save Star some money. Star's actions are an unfair abuse of process.

83. Star's actions violate their obligation to act in Volusia County's best interest. *Geico Gen 'I. Ins. Co. v. AfcDonald*, 315 Fed. Appx. 181, 184 (11th Cir. 2008), citing to *Berges v. Infinity Ins. Co.*, 896 So.2d 665, 677 (Fla. 2004). Further, Star has a duty to exercise ordinary care and prudence in resolving the County's liability. *Ivfaharaj v. Geico*, 996 F.Supp. 2d 1303 (S.D. Fla. 2014). The duty to exercise ordinary care and prudence includes Star's duty to give fair consideration to a settlement offer that is not unreasonable under the facts, and settle, if possible, where a reasonably prudent person, faced with the prospect of paying the total recovery, would do so. *id.* at 1310.

84. The only reason this matter remains unresolved is Star's continued refusal to consent to any settlement between Volusia County and Erin Joynt. For this reason, Star has failed to "give fair consideration to a judgment that is not unreasonable"- a jury decided it and a multiple judges have upheld it, as have two special masters of the Florida House and Senate. Star, by what can only be described as the ultimate forum shopping involving the Florida Legislature, now prevents the County from exercising its statutory prerogative to settle a case for an amount within the excess insurance policy limits and also completely seeks to disregard the mandate of a jury making the jury trial a wasteful, irrelevant, merely cost delaying measure.

Star's actions step on contractual and constitutional law.

85. Star's actions also expose Volusia County to excess exposure. The Florida Senate and House are not bound by the verdict. Hypothetically, they could pass a claims bill in any amount- even \$5,000,000.01 as it is all "de novo." While it is unlikely, it is an example of the dangers which are involved in this process.

86. Since the Final Judgment has been entered, Star has repeatedly vetoed (or withheld its consent) from any meaningful resolution between Volusia County and Erin Joynt at every single stage and thereby ignored the will of the true policyholder- the taxpayers who were represented by a jury selected by Erin Joynt and Volusia County where Star even hired and paid for a jury consultant to make sure they had the best residents of Volusia County to decide damages. See Exhibit "M."

87. Star has therefore seemingly acted in bad faith towards its insured, Volusia County, by not paying Erin Joynt's Amended Final Judgment. As the court stated in *Hillsborough*, "Under Florida Law, Star, as an excess insurer, has a duty of good faith to evaluate settlement proposals, and it cannot 'arbitrarily reject a reasonable settlement offer.'"

88. Star's belief that it holds veto power over the true Volusia County policyholders is misplaced and has delayed justice for Erin Joynt for over two years. A jury has already determined that Volusia County was negligent and caused Erin Joynt to suffer damages in the amount of \$2,000,000.00. Under Florida Law, Star has a good faith obligation to indemnify its insured and pay Erin Joynt the remaining balance of her Amended Final Judgment without further delay.

**THE EXTRA-CONTRACTUAL CLAIMS BILL REQUIREMENT WILL
RENDER COVERAGE PROVIDED UNDER THE POLICY ILLUSORY**

89. Star's extra-contractual requirement of obtaining a claims bill renders coverage for Erin Joynt's claim, verdict and judgment completely illusory since Star repeatedly contended during litigation that the passage of a claim bill is not a reasonable possibility according to the political climate in the Florida Senate.

90. In fact, Ms. Joynt failed to obtain a claims bill in her first two attempts and Volusia County attorneys and Star's attorneys and lobbyists were there to fight it every step of the way, even seeking dismissal because of this very declaratory judgment action.

91. In addition to the practical impossibility of getting a claims bill passed, there is no language contained within the Policy that states that Star is contractually obligated to pay a claims bill if one was passed.

92. As mentioned above, Star's Policy states in pertinent part, "Our duty to defend or settle ends when the Liability Coverage Limit of Insurance has been exhausted by payment of **judgments or settlements.**" (emphasis added)

93. Had Star contemplated their potential obligation of paying a claims bill, Star would have presumably included the term "claim(s) bill" within their insurance Policy. Instead, the Policy, devoid of any mention of "claims bill", limits Star's obligations to "judgements or settlements".

94. Therefore, in the unlikely event a claims bill is passed by the Florida Legislature, there is no policy language that would bind Star to pay a claims bill. A claims bill is a piece of legislation and is neither a "judgment" nor a "settlement".

95. We are here because Star refuses to pay Erin Joynt's final judgment without a claims bill. However, even if the legislature passes a claims bill for Erin Joynt, Star still may not

pay rendering coverage under the policy completely illusory and leaving Erin Joynt with no practical possibility of recovery. Such a result is contrary to legislative intent of §768.28.

CONCLUSION

WHEREFORE, pursuant to the provisions of an insurance policy between, VOLUSIA COUNTY, and STAR INSURANCE COMPANY, as well as Section §768.28 Fla. Stat., Plaintiff respectfully requests a ruling that STAR has no authority to demand extra-contractual obligations of an insured and its third party beneficiary and otherwise mandate legislative resolution of an otherwise resolved litigated tort claim. Specifically, ERIN JOYNT requests a ruling that:

(1) The Policy of Insurance issued by STAR INSURANCE COMPANY provides coverage for the automobile negligence and resulting jury verdict and judgment against of VOLUSIA COUNTY without the need of the extra-contractual requirement of a claims bill;

(2) STAR INSURANCE COMPANY's coverage and indemnity obligations have been triggered by the verdict and judgment in this case;

(3) The passage of a claim bill in excess of the sovereign immunity cap is **NOT** a condition precedent to STAR INSURANCE COMPANY's obligation to indemnify VOLUSIA COUNTY up to the judgment rendered in this case;

(4) The statutory language in Fla. Stat. §768.28(5) grants sole authority to VOLUSIA COUNTY to settle ERIN JOYNT's claim within the limits of the STAR INSURANCE COMPANY Policy, and a group of VOLUSIA COUNTY'S policyholders vetted by all parties (the jury) ordered ERIN JOYNT be paid and that STAR INSURANCE COMPANY cannot otherwise prevent VOLUSIA COUNTY from now seeking to honor the judgment rendered against it;

(5) STAR INSURANCE COMPANY's language prohibiting VOLUSIA COUNTY from negotiating and/or settling ERIN JOYNT's claim is void as against public policy and in violation of Fla. Stat. §768.28(5);

(6) STAR cannot otherwise now substantively raise sovereign immunity as a defense or mandate a claims bill when its policy of insurance does no such thing and it is not a sovereign entity;

(7) STAR owes a present duty to indemnify VOLUSIA COUNTY for ERIN JOYNT's claim and the jury's mandate and consequential judgment; and

(8) ERIN JOYNT, as a beneficiary under the policy, is entitled to attorney's fees and costs incurred in this action against STAR INSURANCE COMPANY and any other relief this Court deems just and proper.

Respectfully submitted,

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