

IN THE SECOND DISTRICT COURT OF APPEAL
STATE OF FLORIDA
CASE No. 2D22-1689

THE HANOVER INSURANCE GROUP, INC.
AND MICHAEL ARLINE, JR.,

Appellants,

v.

LUKE FRAZIER,

Appellee.

BRIEF OF *AMICUS CURIAE*, THE COALITION AGAINST INSURANCE
FRAUD, IN SUPPORT OF APPELLANTS, THE HANOVER
INSURANCE GROUP INC. AND MICHAEL ARLINE, JR.

ON APPEAL FROM A FINAL JUDGMENT ENTERED IN THE CIRCUIT COURT OF
THE THIRTEENTH JUDICIAL CIRCUIT IN AND FOR HILLSBOROUGH COUNTY,
FLORIDA

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TABLE OF CONTENTS

	<u>Page</u>
TABLE OF CITATIONS	ii
STATEMENT OF INTEREST OF AMICUS CURIAE.....	1
SUMMARY OF ARGUMENT	2
ARGUMENT	3
I. Standard of Review.	3
II. Section 626.989, Florida Statutes, Was Enacted To Protect Insurers and Their SIU Employees From Civil Liability In the Absence of Fraud or Malice.	4
III. Anti-Fraud Efforts Depend on the Reporting of SIU Employees and their Employer-Insurers.....	6
IV. The Trial Court Erred In Denying Defendants Statutory Immunity.	10
CONCLUSION	12
CERTIFICATE OF SERVICE	15
CERTIFICATE OF COMPLIANCE	16

TABLE OF CITATIONS

	<u>Page</u>
Cases	
<i>Alterra Healthcare Corp. v. Campbell</i> , 78 So. 3d 595 (Fla. 2d DCA 2011)	3
<i>Kopel v. Kopel</i> , 229 So. 3d 812 (Fla. 2017)	3
<i>Miami-Dade Cnty. v. Asad</i> , 78 So. 3d 660 (Fla. 3d DCA 2012)	4
<i>Pearce v. U.S. Fid. & Guar. Co.</i> , 476 So. 2d 750 (Fla. 4th DCA 1985)	5, 6
<i>Saens v. State Farm Fire & Cas. Co.</i> , 861 So. 2d 64 (Fla. 3d DCA 2003)	4, 5, 12
Statutes	
Ch. 87-334, § 1, 1987 Fla. Sess. Law. Serv. 87-334	4
§ 626.989, Fla. Stat.	<i>passim</i>
§ 626.989(4)(c), Fla. Stat.	5, 10, 12
Other Authorities	
<i>2022 Insurer SIU Benchmarking Study: Insurers Finding Stability in their Anti-Fraud Units</i> , COALITION AGAINST INSURANCE FRAUD, https://insurancefraud.org/wp- content/uploads/2022-Insurer-SIU-Benchmarking- Study-updated-812022.pdf	9

TABLE OF CITATIONS
(Continued)

	<u>Page</u>
Andrew Hurst, <i>Despite Blind Spots About Insurance Fraud, Nearly 1 in 3 People Believe They’ve Been a Victim</i> , VALUEPENGUIN BY LENDING TREE (Aug. 24, 2021), https://www.valuepenguin.com/one-third-of-consumers-believe-they-have-been-insurance-fraud-victims	8
COALITION AGAINST INSURANCE FRAUD, https://insurancefraud.org/about-us/ (last visited Dec. 8, 2022)	1
<i>Consumer Sentinel Network Data Book 2020</i> , FEDERAL TRADE COMMISSION, https://www.ftc.gov/reports/consumer-sentinel-network-data-book-2020 (last visited Dec. 8, 2022)	7
<i>Fraud Stats: Property Casualty Fraud</i> , COALITION AGAINST INSURANCE FRAUD, https://insurancefraud.org/fraud-stats/ (last visited Dec. 8, 2022).....	8
Fred Schulte & Jenni Bergal, <i>Accidents Injure Some, Scare Others: Higher Premiums Passed on to All Drivers</i> , S. FLA. SUN-SENTINEL, Dec. 2000	7
<i>The Impact of Insurance Fraud on the U.S. Economy 2022</i> , COALITION AGAINST INSURANCE FRAUD, https://insurancefraud.org/wp-content/uploads/The-Impact-of-Insurance-Fraud-on-the-U.S.-Economy-Report-2022-8.26.2022-1.pdf (last visited Dec. 8, 2022)	6, 7
Mark K. Delegal and Allison P. Pittman, <i>Florida No-Fault Insurance Reform: A Step in the Right Direction</i> , 29 FLA. S. UNIV. L. REV. 3 (2001)	7

TABLE OF CITATIONS
(Continued)

	<u>Page</u>
Rachel Bodine & Rachel Brennan, <i>10 Worst States for Auto-Related Fraud [2021 Study]</i> , CLEAR SURANCE (July 25, 2022), https://clearsurance.com/blog/worst-states-for-auto-related-fraud	7
S.B. 1464, 2001 Leg. (Fla. 2001)	6

STATEMENT OF INTEREST OF AMICUS CURIAE

The Coalition Against Insurance Fraud (hereinafter, Coalition), founded in 1993, is the nation's only consumer advocacy organization, comprised of 280 member organizations spanning consumers, insurers, state and national government agencies, legislators, prosecutors and other interested parties, seeking to combat all forms of insurance fraud through public advocacy and consumer education. The Coalition's mission is to leverage the combined energy and resources of consumers, government organizations, and insurers by fostering an environment and forum where collaboration thrives to: (1) combat all forms of insurance fraud, (2) reduce costs for consumers and insurers, and (3) promote fairness and integrity in the insurance system. COALITION AGAINST INSURANCE FRAUD, <https://insurancefraud.org/about-us/> (last visited Dec. 8, 2022).

To that end, the Coalition has played an active role in advocating laws, regulations, and policies, to detect, prevent, deter, and prosecute insurance fraud. In addition, the Coalition maintains an active amicus program, serving as a voice to federal and state courts on key anti-fraud issues. Through research and advocacy, the

Coalition seeks to educate and protect consumers, and aid anti-fraud efforts in our nation and with its global partners.

The trial court's decision undermines the protections guaranteed to insurers, Special Investigative Unit (SIU) employees, and any person who reports potentially questionable claims to the Division of Investigative and Forensic Services (DIFS) pursuant to their obligations under Florida's Unfair Insurance Trade Practice laws. The trial court's erroneous, first of its kind, decision guts the carefully crafted statutory scheme, which encourages (i) identification of suspicious claims by discerning SIU departments and (ii) referral to DIFS for full and proper investigation, by limiting exposure to civil liability for the same. Thus, the Coalition's interests in the outcome of this case are significant.

SUMMARY OF ARGUMENT

An \$80 billion problem across the nation, insurance fraud is one of the most costly and damaging forms of fraud crime. Thus, combatting and preventing insurance fraud at the state level is key to protect consumers and minimize the dangerous impacts of such fraud on society as a whole.

The principal issue in this appeal is the application of statutory

immunity from civil liability under § 626.989, Fla. Stat., to insurance companies and SIU employees, like Defendants, arising from claims based on their reporting of suspected fraud to DIFS, as required under Florida law. This statutory mechanism serves as a key tool in combatting insurance fraud.

As the Florida Legislature intended to protect any person from civil liability for reporting suspicious insurance claims to DIFS pursuant to their statutory obligations, the trial court erred in refusing to direct or enter a verdict in the Defendants' favor through, what should have been, a textbook application of § 626.989 immunity. That ruling should be reversed, and final judgment entered in favor of the Defendants.

ARGUMENT

I. Standard of Review.

“An order on a motion for directed verdict or for judgment notwithstanding the verdict is reviewed de novo.” *Kopel v. Kopel*, 229 So. 3d 812, 819 (Fla. 2017); *accord Alterra Healthcare Corp. v. Campbell*, 78 So. 3d 595, 601-02 (Fla. 2d DCA 2011) (same; competent, substantial evidence must support the verdict). “A directed verdict is proper only when the record conclusively shows

an absence of facts or inferences from facts to support a jury verdict, viewing the evidence in a light most favorable to the nonmoving party . . . [N]o factual determination is required, and judgment must be entered for the movant as a matter of law.” *Miami-Dade Cnty. v. Asad*, 78 So. 3d 660, 663, 665 (Fla. 3d DCA 2012) (trial court erred in denying directed verdict in favor of Defendant who was “insulated from a malicious prosecution claim as a matter of law”).

II. Section 626.989, Florida Statutes, Was Enacted To Protect Insurers and Their SIU Employees From Civil Liability In the Absence of Fraud or Malice.

Florida law historically has provided “insurers and their employees with immunity from civil actions, absent fraud or bad faith, arising out of the furnishing of information” to DIFS, as required by statute. *See Saens v. State Farm Fire & Cas. Co.*, 861 So. 2d 64, 67 (Fla. 3d DCA 2003) (citing § 626.989, Fla. Stat.); *compare* Insurance—Fraud, Ch. 87-334, § 1, 1987 Fla. Sess. Law. Serv. 87-334 (West) (codified at Fla. Stat. § 626.989) (providing immunity from civil liability, in the absence of fraud or bad faith, to any person who files reports or furnishes information pursuant to statutory obligation) *with* § 626.989, Fla. Stat. (2022). Concerning immunity, the statute provides:

(c) In the absence of fraud or bad faith, a person is not subject to civil liability for libel, slander, or any other relevant tort by virtue of filing reports, without malice, or furnishing other information, without malice, required by this section or required by the department or division under the authority granted in this section, and no civil cause of action of any nature shall arise against such person:

1. For any such information relating to suspected fraudulent insurance acts or persons suspected of engaging in such acts furnished to or received from law enforcement officials, their agents, or employees;
2. For any information relating to suspected fraudulent insurance acts or persons suspected of engaging in such acts furnished to or received from other persons subject to the provisions of this chapter;
3. For any such information furnished in reports to the department, the division, the National Insurance Crime Bureau, the National Association of Insurance Commissioners, or any local, state, or federal enforcement officials or their agents or employees; or
4. For other actions taken in cooperation with any of the agencies or individuals specified in this paragraph in the lawful investigation of suspected fraudulent insurance acts.

§ 626.989(4)(c), Fla. Stat.

Florida Courts considering the scope of this immunity provision have rejected arguments in favor of narrow construction. *Pearce v. U.S. Fid. & Guar. Co.*, 476 So. 2d 750, 751-53 (Fla. 4th DCA 1985); *accord Saens*, 861 So. 2d at 67-68. Instead, Florida law recognizes

that § 626.989 “immunizes specified persons, if they have done what the section requires or what the Insurance Fraud Division requires . . . [from] all civil causes of action based upon conduct under the statutory section.” *Pearce*, 476 So. 2d at 752-53. And the Legislature has, over time, only *expanded* its scope to protect individuals beyond the insurance community. *E.g.*, S.B. 1464, 2001 Leg. (Fla. 2001) (expanding “immunity from liability for law enforcement officials who provide information to various agencies about acts of insurance fraud.”).

III. Anti-Fraud Efforts Depend on the Reporting of SIU Employees and their Employer-Insurers.

The impacts of auto-related insurance fraud are significant and widespread. *The Impact of Insurance Fraud on the U.S. Economy 2022*, COALITION AGAINST INSURANCE FRAUD, at 6-8, 12, <https://insurancefraud.org/wp-content/uploads/The-Impact-of-Insurance-Fraud-on-the-U.S.-Economy-Report-2022-8.26.2022-1.pdf> (last visited Dec. 8, 2022) (internal citations omitted) (hereinafter, *Coalition Impact Report*). The Federal Trade Commission’s (FTC) and Federal Bureau of Investigation’s (FBI) recent data reveal that the nation’s property and casualty insurance

fraud, which includes auto-related fraud, costs an estimated \$40 billion annually. *Id.* at 12.

These concerns are particularly salient in “no-fault” coverage states like Florida where, whether in the form of staged accidents, intentional misreporting, or other schemes, there is significant fraud exposure and potential for serious financial loss.¹ Indeed, research conducted using the most recent data from the FTC ranks Florida as the third “worst state” for auto-related fraud.² Rachel Bodine & Rachel Brennan, *10 Worst States for Auto-Related Fraud [2021*

¹ As early as 2001, despite the Florida Legislature’s laudable intentions for no-fault insurance to lower premiums, state reporting revealed that Florida drivers were paying more in premiums, per family, because of insurance fraud. Mark K. Delegal and Allison P. Pittman, *Florida No-Fault Insurance Reform: A Step in the Right Direction*, 29 FLA. STATE UNIV. L. REV. 3 (2001) (citing Fred Schulte & Jenni Bergal, *Accidents Injure Some, Scare Others: Higher Premiums Passed on to All Drivers*, S. FLA. SUN-SENTINEL, Dec. 2000, at 22A, *available at* Sun Sen File).

² The FTC defines auto-related fraud cases in its data study as “Misleading or deceptive claims regarding auto prices, financing, leasing, or warranties; repair/maintenance issues with newly purchased used or new cars, including dissatisfaction with service provided by auto mechanics; price fixing and price gouging concerns against gas stations and oil companies; etc.” *Clearsurance*, <https://clearsurance.com/blog/worst-states-for-auto-related-fraud> (citing *Consumer Sentinel Network Data Book 2020*, FEDERAL TRADE COMMISSION, <https://www.ftc.gov/reports/consumer-sentinel-network-data-book-2020> (last visited Dec. 8, 2022)).

Study], CLEARSURANCE (July 25, 2022), <https://clearsurance.com/blog/worst-states-for-auto-related-fraud> (hereinafter, *Clearsurance*). The same data reveals that 22% of drivers admit lying to their auto insurer, “most commonly by claiming damage to their vehicle but then pocketing the money intended for repairs or by lying about their address or number of drivers to get a cheaper premium.” *Fraud Stats: Property Casualty Fraud*, COALITION AGAINST INSURANCE FRAUD, <https://insurancefraud.org/fraud-stats/> (last visited Dec. 8, 2022).

An effective anti-fraud system protects not only insurers, but individual consumers, too. Recent studies show that 68% of consumers on average aren’t aware of various auto insurance fraud schemes and that auto insurance fraud is underreported, with 29% of victims saying they never reported their suspicions. *Id.* (citing Andrew Hurst, *Despite Blind Spots About Insurance Fraud, Nearly 1 in 3 People Believe They’ve Been a Victim*, VALUEPENGUIN BY LENDING TREE (Aug. 24, 2021), <https://www.valuepenguin.com/one-third-of-consumers-believe-they-have-been-insurance-fraud-victims>).

By Legislative design, insurers and SIU employees are the first line of defense against insurance fraud. While technology has grown

to assist in this industry, automated fraud detection has yielded little change in investigation percentage. *2022 Insurer SIU Benchmarking Study: Insurers Finding Stability in their Anti-Fraud Units*, COALITION AGAINST INSURANCE FRAUD, at 6, <https://insurancefraud.org/wp-content/uploads/2022-Insurer-SIU-Benchmarking-Study-updated-812022.pdf>. While automated fraud detection tools account for 21% of accepted referrals, adjusters account for a mammoth 73% share of the same. *Id.* This is why retention of strong SIU employees and leaders is of paramount importance. *Id.* at 3-4. In the wake of the COVID-19 pandemic, anti-fraud operations have continued to grow, with data supporting an increase in SIU staff at 1.4% from 2021 to 2022 with mid-sized carriers leading the way. *Id.* However, a top concern for study participants includes the retention and acquisition of key claims talent to support anti-fraud activities. *Id.* at 7. There can be little doubt that, absent full application of the statutory protections that shelter SIU employees from liability for compliance with their reporting obligations, key professionals may look to other roles or industries to limit potential legal exposure.

Overall, protecting insurers and SIU employees from civil immunity arising from their good faith reporting stops fraud now,

aids in prosecution of wrongdoers, and deters future incidences of fraud. This directly translates into better safety and value to Florida's individual consumers.

IV. The Trial Court Erred In Denying Defendants Statutory Immunity.

Considered under this framework, the trial court's error in refusing to direct verdict in favor of the Defendants based on complete immunity granted under § 626.989(4)(c) is patent.

The Defendants did exactly what § 626.989 mandates. First, Hanover received a claim from Ms. Williams for minor damage to her vehicle from an accident with the Grant Vehicle, insured by Hanover, and driven by Plaintiff, Mr. Frazier. (R.2354, 2473). Next, Hanover made repeated attempts to reach Mr. Frazier and their customer, Ms. Grant, but all calls and letters went unanswered. (R.2482-84, 2832-34). When Mr. Frazier later contacted Hanover to report his own damage and offered a conflicting account of the accident, Hanover opened a collision claim and sent an appraiser to Ms. Grant's home to take photos and prepare a repair estimate. (R.2774, 2799-2808, 2813-15, 2831). When Ms. Williams and Mr. Frazier/Ms. Grant's recorded versions of the accident could not be harmonized—with

each assigning fault for the accident to the opposite party—Hanover referred the claim to its SIU division and opened an investigation. (R.2829-30).

After receiving the SIU referral, Mr. Arline reviewed the claim file and conducted his own fact gathering, including review of Mr. Frazier's recorded statement, interviewing Ms. Williams, and receiving and reviewing her recording of Mr. Frazier in which he admitted to be at-fault. (R. 2464). Further, Mr. Arline conducted an on-site inspection at the site of the accident, looking to see if the damage claimed on the Grant Vehicle could have been caused by the toll booth in question. (R. 2464). When Mr. Arline was stonewalled by Mr. Frazier and Ms. Grant, their lack of cooperation factored into his investigation. After repeated attempts to contact Mr. Frazier and Ms. Grant, including a failed meeting, and based on his investigation, Mr. Arline issued his report. In that report, he recommended coverage for the damage to Ms. Williams' vehicle and concluded that there was strong evidence that Mr. Frazier and Ms. Grant had misrepresented the damage to the Grant Vehicle from the accident and falsely claimed that Ms. Williams was at fault. Pursuant to his statutory duty under 626.989, Fla. Stat., Mr. Arline then filed a DIFS

TIP report, advising that his investigation revealed Mr. Frazier and Ms. Grant had falsely reported loss and represented Ms. Williams as at fault in connection with their claim submission. Having complied with its statutory duties, Hanover then closed the SIU investigation.

Defendants' compliance triggered the immunity-from-civil-liability protections that the Legislature intended so that the suspected fraud claim could be fully vetted. § 626.989(4)(c), Fla. Stat. Where the record is void of any evidence that Hanover or Mr. Arline acted fraudulently or with bad faith, referral of the claim to DIFS for investigation was entirely proper. *Saens*, 861 So. 2d at 67-68 (insurer statutorily immune from liability absent any evidence of fraud or bad faith). The trial court's submission of the case to the jury was in error.

CONCLUSION

The Coalition urges the Court to preserve and apply the protections afforded insurers and SIU employees, like the Defendants, who comply with their obligations to report suspected fraud under Florida law, thereby serving the chief aims of the Legislature's intended purpose in enacting § 626.989, Fla. Stat. Subjecting front line employees to potential liability for their good

faith reporting to the appropriate Division of Investigative and Forensic Services for further investigation may unintentionally chill reporting—particularly in questionable cases appropriate for further scrutiny—thereby hampering the state’s ability to identify, prosecute, and prevent auto-related insurance fraud. Accordingly, the Court should reverse the final judgment and remand with directions for the trial court to enter final judgment notwithstanding the verdict in Defendants’ favor based on the applicable statutory immunity from liability.

Respectfully Submitted,

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I HEREBY CERTIFY that a true and correct copy of this Initial Brief was served via Florida’s E-Filing Portal to all counsel of record (listed below) on this 12th day of December 2022:

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I hereby certify that this brief was prepared in Bookman Old Style, 14-point font, in compliance with Rule 9.045(b) of the Florida Rules of Appellate Procedure. I also certify that this brief contains 2,395 words, in compliance with Florida Rules of Appellate Procedure 9.370(b).

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