

**IN THE SUPREME COURT OF FLORIDA**

**CASE NO. SC19-944**

JAMES MENENDEZ and  
CRARY BUCHANAN, P.A.,

Petitioners,

vs.

L. T. Case No.: 4D17-3277

FRANK BELLEZA,

Respondent.

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**PETITIONERS' RESPONSE TO ORDER TO SHOW CAUSE**

Petitioners, James Menendez and Crary Buchanan, P.A., respond to the Court's February 1, 2022 Order to show cause "why this Court's decisions in *Younkin v. Blackwelder*, 46 Fla. L. Weekly S291 (Fla. Oct. 14, 2021), and *Dodgen v. Grijalva*, 46 Fla. L. Weekly S293 (Fla. Oct. 14, 2021), are not controlling in this case, and how those opinions impact the Court's decision on jurisdiction in this case." Petitioners respectfully submit that *Younkin* and *Dodgen* do not control the outcome of this case, and will not inform the Court's decision. Neither one involves the permissible scope of discovery about the financial relationship between a plaintiff's law firm and plaintiff's treating physicians—which is the issue in this case.

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## **BACKGROUND**

This case arises from a collision involving Plaintiff/Respondent Frank Bellezza, who was riding his bicycle; and a vehicle owned by Crary Buchanan, P.A. and driven by its employee, James Menendez. *Bellezza v. Menendez*, 273 So. 3d 11, 12 (Fla. 4th DCA 2019). Plaintiff sued Petitioners, alleging negligence and vicarious liability against the employee and law firm, respectively. *Id.*

During the course of discovery, Plaintiff's cousin testified that the Plaintiff had told him that, after the accident, counsel referred him to certain physicians for medical treatment. 273 So. 3d at 13. Defendants sought discovery of the amounts the attorney's firm paid the physicians. *Id.* at 12. The trial court found the request relevant to establish physician bias and—over Plaintiff's objection that the attorney-client privilege protected the materials—permitted the discovery. *Id.* The Plaintiff thereafter produced records of all payments made between his attorney's firm and the treating physicians, including letters of protection.<sup>1</sup> *Id.* at 12-13. After

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<sup>1</sup> “A letter of protection is a document sent by an attorney on a client's behalf to a health-care provider when the client needs medical treatment, but does not have insurance. . . . [T]he letter states that the client is involved in a court case and seeks an

informing the court she would no longer serve as counsel, Plaintiff's attorney testified as a corporate representative with respect to the amounts the law firm paid. *Id.* at 13-14. The jury decided in favor of the Plaintiff and awarded \$20,916.33 in past medical expenses, apportioning him 57½% fault for the accident. *Id.* at 14. The Plaintiff moved for a new trial, arguing that the court erred in admitting evidence and testimony regarding the payments to his treating physicians. *Id.* The court denied the motion. *Id.*

Plaintiff appealed, arguing that the trial court abused its discretion by allowing discovery into the amounts paid to the treating physicians, and requiring his attorney to testify. *Id.* at 14-15. The Fourth District agreed and remanded for a new trial, holding that this Court's decision in *Worley v. Cent. Fla. Young Men's Christian Ass'n, Inc.*, 228 So. 3d 18 (Fla. 2017) provided blanket protection over the financial aspects of the attorney-physician relationship and that Plaintiff's attorney should not have

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agreement from the medical provider to treat the client in exchange for deferred payment of the provider's bill from the proceeds of [a] settlement or award; and . . . if the client does not obtain a favorable recovery, the client is still liable to pay the provider's bills." *Worley*, 228 So. 3d at 24 n.4 (quoting Caroline C. Pace, Tort Recovery for Medicare Beneficiaries: Procedures, Pitfalls and Potential Values, 49 Hous. Law. 24, 27 (2012)).

been required to testify as the law firm's corporate representative. *Id.* at 15-16.

Defendants filed a notice to invoke this Court's discretionary jurisdiction based on express and direct conflict. Once the parties filed their jurisdictional briefs, the Court stayed the case pending the outcome of *Younkin* and *Dodgen*. After resolving both cases, the Court issued the current order to show cause why *Younkin* and *Dodgen* are not controlling and how these decisions affect the Court's decision on jurisdiction.

### **ARGUMENT**

*Younkin* and *Dodgen* are not controlling and will not inform the Court's decision in this case. Neither case addresses the scope of discovery into the financial relationship between a plaintiff's law firm and plaintiff's treating physicians.

First, in *Dodgen*, the plaintiff sought discovery about the financial relationship between the *defendant's* liability insurer and *medical experts* the defense had retained. 2021 WL 4782479, at \*1. The defendant argued that, under this Court's decision in *Worley*, the attorney-client privilege shielded the information from discovery. *Id.* The Fourth District rejected the argument,

interpreting *Worley* as holding that only the financial relationship between a *plaintiff's* law firm and treating physicians is entitled to privilege, and that *Worley* applied solely to the plaintiff's side of the case. *Id.* at \*3. On review, this Court agreed that *Worley* applied in “a plaintiff-only context,” but clarified that the opinion was “narrowly framed” to “preclude[] *defense counsel from asking a plaintiff* whether his or her attorney referred the plaintiff *to a physician for treatment.*” *Id.* at \*4 (emphasis in original). The Court explained that *Worley* turned, in part, on the fact that “treating physicians” are materially different from “hired” experts. *Id.* And *Worley* was limited to treating physicians. *Id.* Thus, the Court held that *Worley* did not apply to the relationship between a *defendant's liability insurer* and *medical experts*, and therefore the discovery at issue did not implicate the attorney-client privilege. *Id.* at \*5.

Similarly, in *Younkin*, the plaintiff sought discovery of the financial relationship between the *defendant's law firm* and his *medical expert*. 2021 WL 4782799, at \*1. The defendant moved for a protective order based on attorney-client privilege, but the trial court denied the motion. *Id.* On appeal, the Fifth District rejected defendant's argument that *Worley* proscribes discovery related to

the relationship between defense counsel and medical experts. *Id.* Relying on its reasoning in *Dodgen*, this Court reiterated that *Worley* did not foreclose such discovery, and approved the Fifth District's result. *Id.* at \*2.

This case is different from *Younkin* and *Dodgen*. Neither case addresses the permissible scope of discovery into the financial relationship between a *plaintiff's law firm* and *treating physicians*. *Dodgen* considered: "Whether it is a departure from the essential requirements of law to permit discovery regarding the financial relationship between a defendant's *nonparty insurer* and an expert witness retained by the defense?" 2021 WL 4782479, at \*1 (emphasis added). *Younkin* considered a similar question: "Whether it is a departure from the essential requirements of law to permit discovery regarding the financial relationship between a defendant's *nonparty law firm* and an expert witness retained by the defense?" 2021 WL 4782799, at \*2 (emphasis added). Both cases, therefore, considered the defense side of the equation. And both cases distinguished this Court's prior decision in *Worley* on that basis. Both cases also addressed discovery of *experts*. Although they both refer to "treating physicians" and "treatment," the decisions hinged

on the existence of a financial relationship between *medical experts* and *defendants*.

The discovery ruling here, on the other hand, involves discovery wholly unrelated to a defendant's medical expert. The issue is whether a defendant may seek discovery into—and the jury may hear about—a treating physician's potential bias because of the physician's financial relationship with, and regular referrals from, a plaintiff's law firm. That was not the issue in either *Younkin* or *Dodgen*, but it *is* an important issue that this Court should address.

For much the same reason, *Younkin* and *Dodgen* do not affect this Court's decision on jurisdiction. Neither case conflicts with the decision below. Rather, jurisdiction will depend on the Fourth District's opinion's direct conflict with other Florida appellate decisions addressing the permissible scope of discovery into the financial relationship between a plaintiff's law firm and treating physicians. That conflict is addressed in Petitioners' brief on jurisdiction. More recently—after jurisdictional briefing was complete—the Third District decided *Araujo v. Winn-Dixie Stores, Inc.*, 290 So. 3d 936 (Fla. 3d DCA 2019), which also conflicts with

*Bellezza v. Menendez*. Petitioners will be submitting a notice of supplemental authority alerting this Court to that case.

**CONCLUSION**

Based on the foregoing, Defendants submit that *Younkin* and *Dodgen* are not dispositive of this appeal, and request that the Court accept jurisdiction to consider the current case on the merits.

Date: February 16, 2022

Respectfully Submitted,

**WILLIAMS, LEININGER &  
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**CERTIFICATE OF SERVICE**

I CERTIFY that a copy of the foregoing has been filed through Florida's e-Filing Portal and a copy was served by electronic transmission on this 16th day of February 2022 to:

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