IN THE SUPREME COURT OF FLORIDA

CASE NOS. SC19-1923 and SC19-1936
(consolidated)

LABORATORY CORPORATION OF AMERICA, and LABORATORY CORPORATION OF AMERICA HOLDINGS,

Petitioners/Defendants,

v.

PATTY DAVIS, on behalf of herself and others similarly situated,

Respondent/Plaintiff,

_____

L.T. CASE NOS:
2D17-1790 (consolidated with 2D17-829
13th Cir. Case No. 2015CA007914

SHERIDAN RADIOLOGY SERVICES OF PINELLAS, INC. and SHERIDAN HEALTHCARE INC.,

Petitioners/Defendants,

v.

PATTY DAVIS, on behalf of herself and others similarly situated,

Respondent/Plaintiff,

_____/

L.T. CASE NOS:
2D17-829 (consolidated with 2D17-1790
13th Cir. Case No. 2015CA009927

PETITIONERS' INITIAL BRIEF ON THE MERITS

JANE KREUSLER-WALSH
REBECCA MERCIER VARGAS
STEPHANIE L. SERAFIN
KREUSLER-WALSH, VARGAS & SERAFIN, P.A.
501 South Flagler Drive, Suite 503
West Palm Beach, FL 33401-5913
(561) 659-5455
Counsel for Petitioners, Sheridan Radiology Services of Pinellas, Inc. and Sheridan Healthcare, Inc.

CATHERINE E. STETSON, *pro hac vice*
HOGAN LOVELLS US LLP
555 Thirteenth Street, NW
Washington, DC 20004
(202) 637-5600
Counsel for Petitioners, Laboratory Corporation of America and Laboratory Corporation of America Holdings

DAVID S. JOHNSON
SCOTT W. ANDERSON
JOHNSON DABOLL ANDERSON, PLLC
2011 W. Cleveland Street, Suite F
Tampa, FL 33606
(813) 377-2499
Counsel for Petitioners, Sheridan Radiology Services of Pinellas, Inc.

STEVEN F. BARLEY, *pro hac vice*
HOGAN LOVELLS US LLP
100 International Drive, Suite 2000
Baltimore, MD 21202
(410) 659-2700
Counsel for Petitioners, Laboratory Corporation of America and Laboratory Corporation of America Holdings

SUSAN N. EISENBERG
JENNIFER T. WILLIAMS
COZEN O'CONNOR
200 South Biscayne Blvd., Suite 4410
Miami, FL 33131
(305) 704-5940
Counsel for Petitioners, Sheridan Healthcare, Inc.

JAMES L. VANLANDINGHAM
HOGAN LOVELLS US LLP
600 Brickell Avenue, Suite 2700
Miami, FL 33131
(305) 459-6500
Counsel for Petitioners, Laboratory Corporation of America and Laboratory Corporation of America Holdings

Counsel for Petitioners, Sheridan Radiology Services of Pinellas, Inc., Sheridan Healthcare, Inc., Laboratory Corporation of America, and Laboratory Corporation of America Holdings

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PREFACE

Consolidated petitioners/defendants, Sheridan Radiology Services of Pinellas, Inc. and Sheridan Healthcare, Inc. (collectively, Sheridan) and Laboratory Corporation of America and Laboratory Corporation of America Holdings (collectively, LabCorp), provided health care services to respondent/plaintiff Patty Davis as part of her workers' compensation claim.[1] Davis subsequently sued Sheridan and LabCorp in circuit court in putative class actions, alleging violations of the Florida Consumer Collection Practices Act (FCCPA) arising from bills Sheridan and LabCorp sent to Davis seeking payment for medical services. The basis for Davis's FCCPA claim was that Sheridan and LabCorp had violated the Workers' Compensation Law, section 440.13(13)(a), Florida Statutes (2019), by seeking payment from *her* rather than from her Workers' Compensation carrier.

But as this Court has explained, broad and "exclusive subject matter jurisdiction" over "disputes involving workers' compensation issues" lies "within the workers' compensation proceedings"—not the State's Article V courts. *Sanders v. City of Orlando*, 997 So. 2d 1089, 1093 (Fla. 2008). That exclusive

[1] The LabCorp Defendants are those in Case No. SC19-1923. The Sheridan defendants are those in Case No. SC19-1936, The following symbols are used: 2RS is the Sheridan Record on Appeal in the Second District; 2RL is LabCorp's Record on Appeal in the Second District; RS is the Sheridan Record on Appeal in Supreme Court; and RL is the LabCorp Record on Appeal in Supreme Court. All emphasis is supplied unless indicated otherwise.

jurisdiction specifically includes the claims Davis made in her complaints. § 440.13(11)(c).

Sheridan and LabCorp accordingly moved for judgment on the pleadings in their favor. Both circuit courts agreed and dismissed Davis's actions for lack of jurisdiction. The Second District reversed in a divided opinion, holding that the Workers' Compensation Law did not deprive the courts of jurisdiction over Davis's claims against her workers' compensation health care providers. Judge Black dissented.

The Second District certified the following question of great public importance:

> Does section 440.13(11)(c) of the Workers' Compensation Law preclude circuit court jurisdiction over claims under section 559.77(1) of the Florida Consumer Collection Practices Act?

(RS:214; RL:211). This Court should answer the certified question in the affirmative. Specifically: Section 440.13(11)(c) of the Workers' Compensation Law precludes circuit court jurisdiction over the FCCPA claims Davis asserted in her complaints because such claims lie exclusively within the jurisdiction of the workers' compensation process. Because Davis's claims were based solely on alleged violation of the Workers' Compensation Law, this Court should quash the decision of the Second District and remand with directions to affirm the dismissals

of Davis's complaints.[2]

STATEMENT OF THE CASE AND FACTS

Background

Patty Davis was injured at work in December 2013, and applied for workers' compensation benefits (2RS:247; 2RL:7). As part of her health care benefits, Davis had a preoperative x-ray taken by Sheridan and medical testing done by LabCorp (2RS:248; 2RL:8).

Sheridan sent Davis a bill in April 2015, seeking reimbursement for the x-ray services it provided (2RS:249, 278). Davis received a second bill some weeks later from a collection agency for Sheridan (2RS:249, 279). Sheridan sent Davis another bill in July 2015, after Davis's workers' compensation carrier contacted Sheridan to advise that Davis was not responsible for the bill and that billing her would violate the Workers' Compensation Law, section 440.13(13)(a), Florida Statutes (2019) (2RS:249-50, 280-82).

LabCorp sent Davis two bills in May and September of 2014, seeking reimbursement for the medical testing it provided (2RL:8, 9, 18, 22). Before LabCorp sent Davis the second bill, Davis's workers' compensation carrier similarly contacted LabCorp to advise them that billing Davis would violate the

[2] This Court has jurisdiction to review the certified question under Article V, Section 3(b)(4) of the Florida Constitution.

Workers' Compensation Law (2RL:9, 21).

In August 2015, Davis separately sued Sheridan and LabCorp in the circuit court for Hillsborough County in putative class actions, alleging violations of the FCCPA (2RS:8-86; 243-82; 2RL:5-22). Davis alleged that Sheridan and LabCorp had violated section 559.72(9), Florida Statutes, by attempting to collect a debt they knew was "not legitimate," and that Sheridan had also violated section 559.72(5) by disclosing information to a collection agency it knew was false—namely, that Davis owed Sheridan reimbursement for its services (2RS:249, 255-61, 2RL:6, 15-17).

The sole basis for Davis's FCCPA claims was that Florida's Workers' Compensation Law specifically directs, under a section entitled "Payment of medical fees," that "[a] health care provider may not collect or receive a fee from an injured employee within this state," with some exceptions not relevant here. § 440.13(13)(a); *see also* § 440.13(3)(g) (noting that "[t]he employee is not liable for payment for medical treatment or services provided pursuant to this section except as otherwise provided in this section"). By billing Davis directly for payment, the Complaints contended, Sheridan and LabCorp had violated the Workers' Compensation Law and, therefore, the FCCPA (2RS: 245-50 ¶¶ 14-15, 32, 37-41; 2RL:5-17 ¶¶ 8-12, 14-20). Davis attached to each of her Complaints copies of the bills Sheridan and LabCorp sent her (2RS:278-79, 281-82; 2RL:18,

22).

The Workers' Compensation Law

The Workers' Compensation Law sets forth a comprehensive system for addressing and resolving disputes related to payments for medical services rendered to employees injured in the course of their employment. *See* § 440.13. To ensure the system remains an "efficient and self-executing" way to address issues, including payment issues, in a way that "is not an economic or administrative burden," section 440.015, Florida Statutes (2019), the Legislature directed "that the department [of financial services], the agency [for Health Care Administration], and the Division of Administrative Hearings assume an active and forceful role in its administration of this act, so as to ensure that the system operates efficiently and with maximum benefits to both employers and employees." § 440.44(2), Fla. Stat. (2019); *see also* § 440.015; § 440.191(1)(a), Fla. Stat. (2019) (emphasizing "the self-executing features of the Workers' Compensation Law" and the need to avoid unnecessary litigation, expense, and delay).

The Department of Financial Services (the "Department") has broad investigatory and monitoring authority over health care provided to employees pursuant to the workers' compensation statute. § 440.13(11). Among other things, the Department has a broad mandate to "investigate health care providers to

determine . . . whether providers are engaging in improper billing practices." § 440.13(11)(a).

The Florida Administrative Code sets out detailed rules defining and prescribing the process of identifying violations of the Workers' Compensation Law by health care workers rendering services to covered employees. Rule 69L-34.001 defines "violation" as a provider's "non-compliance with chapter 440, F.S. and Division rules." Mirroring the language in the statute, violations include "*collecting or receiving payment from an injured worker* in violation of section 440.13(13)(a)" and "failing to properly bill medical services." Fla. Admin. Code R. 69L-34.001(6). Rule 69L-34.001(7) relatedly defines "improper billing and billing errors" as a health care provider's failure to "comply with the Division's billing and reporting requirements . . . and the applicable reimbursement manual(s)."[3]

Workers' compensation carriers *must* report instances of improper billing to the Division. *Id.* R. 69L-34.002. And "[a]ny person" *may* report a health care provider's billing violation. *Id.* R. 69L-34.003 (guiding "[a]ny person who elects to submit a report of a violation" of the rules through the process of submission and documentation). The materials submitted by the reporting person may include

[3] The Division is defined as the Division of Workers' Compensation within the Florida Department of Financial Services. Fla. Admin. Code R. 69L-34.001(2).

"[c]opies of collection letters sent to the injured worker from the Provider or a collection agent acting on behalf of the Provider, seeking payment for covered medical services authorized by the Carrier." *Id.* R. 69L-34.003(4)(i).

Section 440.13(8) is headed "Pattern or practice of overutilization." The provision expressly specifies that a pattern-or-practice finding is not a prerequisite to a penalty. § 440.13(8)(b). If the Department determines that a provider "has engaged in a pattern or practice of overutilization *or* a violation of this chapter or rules adopted by the [D]epartment, *including* a pattern or practice of providing treatment in excess of the practice parameters or protocols," it may impose the menu of penalties. § 440.13(8)(b).

A provider found to have violated section 440.13 or the rules above can be subject to "one or more of the following penalties": (1) "An order barring the provider from payment under this chapter" altogether, or short of that, (2) "Deauthorization of care under review; (3) Denial of payment for care rendered in the future; (4) An administrative fine of $5,000; and (5) Notification of and review by the appropriate licensing authority." § 440.13(8)(b); *see also Golden v. Maynard Coach & Truck Lines, Inc.*, No. 06-021546, 2007 Fla. Wkr. Comp. Lexis 6162, at *4 (J.C.C. Dec. 18, 2007) (explaining that a health care provider's attempt to collect fees from an injured worker may subject the provider to penalties and fines up to $100,000).

The Department does not only have a broad investigative mandate and a rigorous enforcement menu. It also has "exclusive jurisdiction to decide any matters concerning reimbursement." § 440.13(11)(c).

The decisions below

In response to Davis's Complaints, both Sheridan and LabCorp moved for judgment on the pleadings, explaining that the circuit courts lacked jurisdiction over Davis's FCCPA claims because they fall within "any matters concerning reimbursement" and, thus, were subject to the Department's exclusive jurisdiction (2RS:602-19; 2RL:114-23). The circuit courts agreed and dismissed Davis's actions (2RS:776-77; 2RL:247-48).

Davis appealed to the Second District (RS:5-9; RL:7-11). In her initial brief, Davis's primary argument was that because the FCCPA did not carve out medical providers from the definition of any person potentially liable for pursuing an illegitimate debt, and because the Act did not carve out medical debts from the definition of consumer debt, the FCCPA controlled over what she described as the specific jurisdictional limitations of the Workers' Compensation Law (RS:97-99; RL:94-96). As for the Workers' Compensation Law, Davis argued that the Law's references to "exclusive *liability*" in section 440.11(1) and (4) had to do with "disputes and claims arising between the injured worker and his employer and employer's insurance carrier," RS:100; RL:97, and that the Act's references to

"reimbursement *disputes*" extend only to "any disagreement between a health care provider or health care facility and carrier concerning payment for medical treatment." (RS:102; RL:99).

What Davis did not grapple with at all in her initial brief, however, was the exclusive *jurisdiction* provision that prompted both trial courts' dismissals: Section 440.13(11)(c), which extends the Department's exclusive jurisdiction to "*any matters concerning reimbursement.*" Indeed, Davis's initial brief cited that dispositive provision only once—and then promptly misstated its scope, suggesting it pertains only to "reimbursement disputes" (RS:101; RL:98). Davis also ignored this Court's admonishment that "[a]ll Article V courts that have been presented with the issue of subject matter jurisdiction to adjudicate disputes involving workers' compensation matters have uniformly held in very broad, general, and generic terms that Article V courts have *no* subject matter jurisdiction to adjudicate disputes involving workers' compensation issues." *Sanders v. City of Orlando*, 997 So. 2d 1089, 1093 (Fla. 2008) (emphasis in original). Davis, thus, never argued that her matter was not one "concerning reimbursement"; she argued only that it was not a "reimbursement dispute" as the statute defined that phrase.

LabCorp and Sheridan explained just that in their opposition. As they noted, Davis's argument that the issue here did not constitute a "reimbursement dispute" was unavailing, because "the Legislature, in Section 440.13(11)(c), chose not to

limit the Department's exclusive jurisdiction to deciding 'Reimbursement Disputes'" (RS:139; RL:136). Rather, the exclusive-jurisdiction statute broadly encompasses "'*any* matters concerning reimbursement'" (RS:139; RL:136, quoting section 440.13(11)(c)).

In a two-to-one decision, the Second District reversed both rulings. The majority recognized what Davis's brief did not: that "the plain language of the [Workers' Compensation Law] states that the [Department] 'has exclusive jurisdiction to decide *any matters concerning reimbursement*,'" RS:203; RL:200 (emphasis in original), and that language is "very general and broad" (RS:208; RL:205). Yet the majority reversed on a ground Davis had not even argued: That the phrase "any matters concerning reimbursement" in section 440.13(11)(c) did not encompass Davis's claims about improper requests for reimbursement, because Davis was suing for illegal "collection" practices, and "the terms 'reimbursement' and 'collection' do not mean the same thing" (RS:204-06; RL:201-03). The majority opined that the best way to harmonize the Workers' Compensation Law with the FCCPA was to think of the Workers' Compensation Law's "very general and broad" exclusive-jurisdiction provision as being overborne by the "specific" circumstances giving rise to a private right of action under the FCCPA (RS:208-09; RL:205-06).

Judge Black dissented. As he observed, "[c]learly and unequivocally, *any*

matters that *concern* chapter 440 reimbursement fall within the exclusive jurisdiction of the Department. The phrase 'any matters concerning reimbursement' is unambiguous" (RS:218; RL:215) (Black, J., dissenting) (emphasis in original). Davis forfeited the argument that her claims did not concern reimbursement by arguing only that they fell outside the definition of "reimbursement dispute," RS:218-19; RL:215-16—meaning that the majority had premised its entire ruling on a ground Davis had not advanced (RS:225-29; RL:222-26).[4]

As for reconciling the two statutes, Judge Black explained, the majority had it backwards: "[T]he [Workers' Compensation Law] narrowly and specifically addresses workers' compensation reimbursement matters while the FCCPA generally governs consumer debt collection practices." (RS:222; RL:219) (Black, J., dissenting). The express and unambiguous language of the workers' compensation statute and rules prompt the "singular conclusion that the Legislature intended for the Department to police the practices of workers' compensation health care providers, serving as the exclusive authority for imposing penalties when violations occur, including violations involving collection practices."

[4] In her six-page reply brief, Davis suggested in passing that her claims did not concern *reimbursement*, but instead concerned whether LabCorp and Sheridan had improperly "sen[t] her bills" (RS:178; RL:175). Statements in a reply brief do not preserve arguments. *See Martinez v. Ipox*, 925 So. 2d 448, 450 (Fla. 2d DCA 2006) (arguments raised for the first time in a reply brief are waived). And in any event, the distinction is specious. The bills were for reimbursement.

(RS:224; RL:221) (Black, J., dissenting).

The court certified the following question to this Court as one of great public importance:

> Does section 440.13(11)(c) of the Workers' Compensation Law preclude circuit court jurisdiction over claims under section 559.77(1) of the Florida Consumer Collection Practices Act?

(RS:214; RL:211). This Court should answer the certified question "yes": Section 440.13(11)(c) of the Workers' Compensation Law precludes circuit court jurisdiction over the FCCPA claims Davis asserted in her complaints because such claims lie exclusively within the jurisdiction of the workers' compensation process.

SUMMARY OF ARGUMENT

Davis's FCCPA claims were based on the allegation that Sheridan and LabCorp had improperly sought payment for medical services from Davis rather than her workers' compensation carrier, in violation of the Workers' Compensation Law. Those claims were "any matters concerning reimbursement" under section 440.13(11)(c), Florida Statutes (2019). They accordingly fall within the Department's broad and exclusive jurisdiction over disputes involving workers' compensation issues, and outside the jurisdiction of Article V courts.

The trial court and the Second District dissent correctly interpreted this broad statutory language—"any matters concerning reimbursement"—to include

Davis's claims that Sheridan, LabCorp, and Sheridan's collection agency improperly sought payment for medical services from Davis rather than her workers' compensation carrier.

The majority's strained and narrow interpretation of "any matters concerning reimbursement" does not comport with the plain language of the statute and frustrates the purpose of the Worker's Compensation Law. In all events, the Second District wrongly reversed based on an argument Davis did not raise in her initial brief and, thus, waived. This Court should answer the certified question "yes" and reverse the Second District.

ARGUMENT

Point on Appeal: Section 440.13(11)(c) of the Workers' Compensation Law precludes circuit court jurisdiction over FCCPA claims related to "any matters concerning reimbursement."

A. Standard of review

This case raises a pure question of law and statutory construction; therefore this Court's standard of review is de novo. *See Wright v. City of Miami Gardens*, 200 So. 3d 765, 770 (Fla. 2016).

B. Florida Workers' Compensation Law vests exclusive jurisdiction in the Department to adjudicate "any matters concerning reimbursement."

As explained above, the Workers' Compensation Law sets forth a comprehensive system for addressing and resolving disputes related to payments

for medical services rendered to employees injured in the course of their employment, including to "investigate health care providers to determine . . . whether providers are engaging in improper billing practices." § 440.13(11)(a), Fla. Stat. (2019). Carriers are required to report improper billing to the Division. Fla. Admin. Code R. 69L-34.002. "Any person who elects to submit a report of a violation" of the rules may do so as well. *Id.* R. 69L-34.003(1). That report may include—just as Davis attached to her court complaints—"[c]opies of collection letters sent to the injured worker from the Provider or a collection agent acting on behalf of the Provider, seeking payment for covered medical services authorized by the Carrier." *Id.* R. 67L-34.003(4)(i). A provider found to have violated section 440.13 or the rules above can be subject to harsh penalties, including "[a]n order barring the provider from payment under this chapter" altogether and review of their medical license. § 440.13(8)(b).

The Department also has "*exclusive jurisdiction to decide any matters concerning reimbursement*." § 440.13(11)(c); *Avalon Ctr. v. Hardaway*, 967 So. 2d 268, 272 (Fla. 1st DCA 2007) (quoting same language). Florida courts regularly invoke this provision when they re-route workers' compensation issues that have come before the wrong tribunal in error. *See*, *e.g.*, *J.B.D. Brother's v. Miranda*, 25 So. 3d 1271, 1272 (Fla. 1st DCA 2010) (Office of the Judges of Compensation Claims lacks jurisdiction to order payment of an outstanding

provider bill); *Avalon Ctr.*, 967 So. 2d at 272 (same); *Bryan LGH Med. Ctr. v. Fla. Beauty Flora, Inc.*, 36 So. 3d 795, 796 (Fla. 1st DCA 2010) (reiterating that the Department has exclusive jurisdiction to decide "any matters concerning reimbursement").

C. Davis's claims are "any matters concerning reimbursement" subject to the exclusive jurisdiction of the Department.

There is no dispute that Sheridan and LabCorp's bills to Davis would have been legitimate, but for the Workers' Compensation Law. *See* § 440.13(13)(a). The sole basis of each of Davis's lawsuits was that LabCorp and Sheridan had improperly billed her, rather than her carrier, for reimbursement under the relevant provisions of the Workers' Compensation Law; that is why her complaints attached the billing letters that Sheridan and LabCorp sent her. (2RS:245-50 at ¶¶ 14-15, 32, 37-41; 2RL:5-22 at ¶¶ 8, 10, 18). Without the Workers' Compensation Law's particularized reimbursement requirements, she would have no basis whatsoever upon which to assert a FCCPA claim.

The critical question, then, is whether Davis's claims fall within the exclusive jurisdiction of the Department as among the scope of "any matters concerning reimbursement." The plain language of the statute supplies the answer. The answer is, yes.

Legislative intent is the polestar of statutory interpretation. *See, e.g.*,

Knowles v. Beverly Enters.-Fla., Inc., 898 So. 2d 1, 5 (Fla. 2004), and cases cited therein. To determine that intent, courts look first to the statute's plain meaning. *Id.* "'[W]hen the language of the statute is clear and unambiguous and conveys a clear and definite meaning, there is no occasion for resorting to the rules of statutory interpretation and construction; the statute must be given its plain and obvious meaning.'" *Id.* (quoting *Holly v. Auld*, 450 So. 2d 217, 219 (Fla. 1984)). Words or phrases in the statute must be construed in accordance with their common and ordinary meanings. *Atwater v. Kortum*, 95 So. 3d 85, 90 (Fla. 2012). This Court must interpret statutes as they are written and give effect to each word. *Id.* And courts should avoid readings that would render part of a statute meaningless. *State v. Goode*, 830 So. 2d 817, 824 (Fla. 2002).

The majority described the relevant statutory phrase "any matters concerning reimbursement" as "very general and broad" (RS:208; RL:205). That is true. Three separate elements of that phrase show its breadth:

First, the Legislature chose to use the word "any" in describing the scope of the Department's exclusive jurisdiction over matters concerning reimbursement. The ordinary meaning of that term is plain: "'[a]ny,' after all, means any," *Ford v. Mabus*, 629 F.3d 198, 206 (D.C. Cir. 2010), and "all." *CBS Inc. v. PrimeTime 24 Joint Venture*, 245 F.3d 1217, 1223 (11th Cir. 2001) ("[T]his Court has held that the adjective 'any' is not ambiguous; it has a well-established meaning. As we

have said before, because Congress did not add any language limiting the breadth of that word, 'any' means all." (citing *United States v. Gonzales*, 520 U.S. 1, 5 (1997) (internal citations and notations omitted)). Absent particular statute-specific evidence to the contrary, the word's "expansive meaning," *Gonzales*, 520 U.S. at 5, should be read broadly and without artificial limitation. *See, e.g.*, *Starks v. State*, 223 So. 3d 1045, 1049 (Fla. 2d DCA 2017) ("By its plain and ordinary meaning, the phrase 'any act' is broad and not limited to a specific kind of act"); *see also Edwards v. Thomas*, 229 So. 3d 277, 284 & n.4 (Fla. 2017) (discussing the expansive meaning of "any").

Second, the Legislature did not stop at "any." It confirmed the breadth of that grant of exclusive jurisdiction to the Department by following up "any" with the phrase "matters *concerning* reimbursement." "Concerning" is ordinarily used interchangeably with "related to," "about," "with reference to," and "as regards," as the majority correctly acknowledged (RS:206; RL:203, citing Merriam-Webster). "The definitions of these words are overlapping and circular, with each one pointing to another in the group." *Lamar, Archer & Cofrin, LLP v. Appling*, 138 S. Ct. 1752, 1759 (2018); *see also Dixon v. Pub. Health Trust of Dade Cnty.*, 567 F. App'x 822, 827 (11th Cir. 2014) ("The key term in the definition is 'concerning.' That term means '[r]elating to' or 'affecting.'"). And case after case has explained that when a statute or contract uses the words "concerning,"

"relating to," or the like, without other limitation, its scope is broad. *See Jackson v. Shakespeare Found., Inc.*, 108 So. 3d 587, 593 (Fla. 2013) (use of the words "relating to" in an arbitration provision broadens the scope of the provision); *Five Points Health Care Ltd. v. Alberts,* 867 So. 2d 520, 522 (Fla. 1st DCA 2004) (broadly interpreting an arbitration provision that used the words "arising out of or related to").

Third, there is no reference to a specific subsection accompanying "any matters concerning reimbursement." Contrast this with the other segments of the same jurisdiction-conferring provision, which specify that the Department has exclusive jurisdiction over "any overutilization dispute *under subsection (7)*" and "any question concerning overutilization *under subsection (8)*." § 440.13(11)(c). The Supreme Court in *Gonzales* explained that because "Congress did not add any language limiting the breadth of" the word "any," a court interpreting that word could not impose an artificial limit. 520 U.S. at 5. So too here; "any means any," and a claim about an improper request for reimbursement is easily among "any matters concerning reimbursement."

The Second District did not take issue with "any," or with "concerning," or with the broad scope of "any matters concerning reimbursement" compared to the other jurisdictional provisions in the same statute. Instead, it focused on the word "reimbursement."

The court began in the right place: "To 'reimburse' means to 'repay' or 'to make restoration or payment of an equivalent to'" (RS:204; RL:201, citing Merriam-Webster); *see also* Reimbursement, *Black's Law Dictionary* (11th ed. 2019) ("1. Repayment. 2. Indemnification."). But the court then took an odd turn—one completely untethered to any statutory language or case law. It went on to describe reimbursement as a word "typically used to express repayment by a third party not directly involved in a transaction" (RS:204; RL:201).

The court used a hypothetical about buying a sandwich to explain "reimbursement." In the hypothetical, Jane pays for John's sandwich from a vendor, and John later reimburses her for that purchase from a third party. From this, the court concluded that "[r]eimbursement thus involves more than two parties" (RS:204; RL:201).

But there simply is no third-party requirement inherent in the word "reimburse." While reimbursement *can* be synonymous with "indemnification," there is no reason to believe that the Legislature intended a narrowing interpretation that "indemnification" be the *only* meaning of "reimbursement." Indeed, the Second District's "third party not directly involved in a transaction" gloss appears in no other definition, legal or otherwise, of which counsel is aware. *Cf. E. Airlines v. Planet-Reliance Ins. Co.*, 695 So. 2d 732, 734 (Fla. 1st DCA 1996) (giving "reimbursement" in another Workers' Compensation Law provision,

section 440.42(3), Florida Statutes, its "ordinary meaning" to reject argument for "limit[ing] recovery to out-of-pocket payments actually made by the carrier") (citing Black's Law Dictionary (5th ed. 1979)); *Koile v. State*, 934 So. 2d 1226, 1232 (Fla. 2006) (rejecting overly "restrictive" definition of "reimbursement" in criminal restitution statute because the term "includes both paying a person back for expenses already incurred *and* restoring a person back to the position he or she formerly occupied so that the person is made whole"); *TIG Ins. Co. v. Eagle Inc.,* 294 F. App'x 920, 926 (5th Cir. 2008) ("clear and unambiguous" reimbursement policy provided that one party was "only required to reimburse Eagle for claims and expenses paid by Eagle *or* for it by a third party"); *FDIC v. AmFin Fin. Corp.*, 757 F.3d 530, 535 (6th Cir. 2014) (rejecting attempted interpretation of a tax-sharing arrangement "imbu[ing] the commonplace terms 'payment' and 'reimbursement' with specialized and unambiguous meaning"); *A.T. Massey Coal Co. v. Holland*, 472 F.3d 148, 160 (4th Cir. 2006) (describing the various meanings of "reimbursements" in the Medicare Act and federal Coal Act, none of which contain a third-party limitation).

There is thus another equally conceivable "reimbursement" scenario—one that involves only two parties and is more in line with the facts of this case than the scenario in the majority opinion. Jane lends John $10 for a sandwich and John later reimburses her. Or, closer to home, Jane treats John's sprained ankle and John

later reimburses her for those services. Here, the debt sought to be reimbursed is the same medical payment for services rendered pursuant to the Workers' Compensation Law, and the person seeking to collect the debt is the same person entitled to reimbursement. That does not make it any less "reimbursement." Under the majority's analysis, a health care provider seeking payment from an insurer is seeking "reimbursement"—but that same health care provider seeking payment directly from the patient is not seeking "reimbursement." This exposes the flaw in the majority's analysis.

After setting forth its categorical conclusion that "reimbursement . . . involves more than two parties," the majority turned to the word "collect" as used in the FCCPA, explaining that "collect" means "to gather or exact" or "to claim as due and receive payment for" (RS:205; RL:202). Using the same Jane/John sandwich hypothetical, the majority concluded that "collection is not the same concept or type of activity as reimbursement, even if a transaction sometimes involves both" (RS:205; RL:202). That is simply not so. When John repays Jane for his sandwich, he reimburses her, and she collects that payment. It is not logically possible to decouple the two sides of that transaction and declare one side "concerning reimbursement" and the other not.

The majority also opined that because "the only party who can reimburse Sheridan and LabCorp" is the carrier under the Workers' Compensation Law,

Davis's claim is not a "matter[ ] concerning reimbursement" (RS:205; RL:202). That is a logical fallacy. Davis's entire claim is that *she* was wrongly asked for reimbursement *rather* than her carrier. The fact that the Worker's Compensation Law relieves her from the legal obligation to reimburse a provider does not mean that when a provider improperly seeks reimbursement from her, that request becomes something other than for reimbursement.

Davis spent much of her briefing below debating a different phrase altogether: "reimbursement *dispute*," defined in the statute as "any disagreement between a health care provider or health care facility and carrier concerning payment for medical treatment." § 440.13(1)(q). It makes sense for any "reimbursement *dispute*" to be limited to those two counterparties, for the reason the majority itself points out: because a provider can look only to the carrier for reimbursement, the provider and the carrier are the only two appropriate counterparties to any reimbursement "dispute." *See* § 440.13(7)(a) (instructing providers that they "must . . . petition the [D]epartment to resolve the dispute" over payment); *see also J.B.D. Brother's*, 25 So. 3d at 1272 (injured employee "has no standing to seek payment of a bill on behalf of a health care provider because he is not responsible for paying the bill and the provider's sole recourse is to seek payment from the [carrier]"); *Avalon Ctr.*, 967 So. 2d at 274 (noting that "[a]bsent any real financial liability, claimant [employee] is without standing to pursue the

reimbursement dispute" on a provider's behalf).

But section 440.13(11)(c)'s reference to "*any matters concerning* reimbursement" is not limited to only "reimbursement disputes" between the provider and carrier. The majority and dissent actually agree on that. The majority notes that "there are categories of 'matters concerning reimbursement' that are not 'reimbursement disputes.'" (RS:206-07 n.1; RL:203-04 n.1). The dissent similarly observed that "any matters concerning reimbursement" encompasses more than "reimbursement dispute[s]" (RS:219; RL:216; Black, J., dissenting). If the Legislature had intended to limit section 440.13(11)(c) to "reimbursement disputes," it would have been easy enough to say so; that exact phrase is used several times elsewhere in the statute. But the Legislature instead chose a broader phrase. The Legislature's "use of different terms in different portions of the same statute is strong evidence that different meanings were intended." *State v. Mark Marks, P.A.*, 698 So. 2d 533, 541 (Fla. 1997) (internal quotation omitted).

The majority's criticism of the exclusive-jurisdiction statute appears to be that it deprives a complainant of a remedy. First, that is incorrect. The Legislature clearly recognized that a health care provider might mistakenly bill a patient for services covered by the workers' compensation system, which is why the Rules specifically address that very situation and why the Act provides for the imposition of penalties in the event it occurs. Those penalties can be more severe than those

available under the FCCPA, and they are designed to deter health care providers from erroneously or improperly billing an injured worker.

Second, and in any case, it is not the court's place to fashion a remedy where one does not exist; that is for the Legislature. The Legislature has long understood that "[a]ll Article V courts that have been presented with the issue of subject matter jurisdiction to adjudicate disputes involving workers' compensation matters have uniformly held in very broad, general, and generic terms that Article V courts have *no* subject matter jurisdiction to adjudicate disputes involving workers' compensation issues." *Sanders*, 997 So. 2d at 1093 (emphasis in original).

And the Workers' Compensation Law is far from toothless, in any event. A complainant may report a health care provider's billing violation to the Department, including submitting "[c]opies of collection letters sent to the injured worker from the Provider or a collection agent acting on behalf of the Provider, seeking payment for covered medical services authorized by the Carrier." Fla. Admin. Code R. 69L-34.003(4)(i). Workers' compensation carriers *must* report instances of improper billing to the Division. *Id.* R. 69L-34.002. A provider found to be in "violation of this chapter or rules adopted by the [D]epartment" can be barred altogether from payment under the Worker's Compensation Law, fined, or subject to a license review, among other punishments. § 440.13(8)(b). If the Legislature wishes to create a more particularized, complainant-facing remedy, it

has the power to do so. A court does not. *Cf. Einhorn v. CarePlus Health Plans, Inc.*, 43 F. Supp. 3d 1329, 1331-32 (S.D. Fla. 2014) (Medicare Act precluded plaintiff's claim under the FCCPA that her health care provider threatened to collect on debts not owed).

D. The majority's attempt to "harmonize" the two statutes was incorrect.

The FCCPA was enacted as a means to regulate consumer collection agencies within the state and curb abuses in the area of debtor-creditor collections. *Harris v. Beneficial Fin. Co. of Jacksonville*, 338 So. 2d 196, 200-01 (Fla. 1976). The FCCPA creates a private cause of action against a person who violates section 559.72, Florida Statutes (2019). *See* § 559.77, Fla. Stat. (2019). That statute prohibits a person collecting a consumer debt from enforcing a debt it knows is not legitimate and from disclosing to a person other than the debtor information about the debtor's reputation, knowing the other person has no legitimate need for the information. § 559.72(5) & (9).

While the FCCPA generally regulates consumer debt collection practices and sets forth prohibited debt collection practices, the Workers' Compensation Law and its related regulations create rights and remedies designed to address the specific type of claims alleged here, by an injured worker who wants to challenge her health care provider's billing practices. The Legislature intended the Workers' Compensation law to be an "efficient and self-executing" way to address issues

arising under the Law in a way that "is not an economic or administrative burden." § 440.015; *see, e.g., Sun Bank/S. Fla. N.A. v. Baker*, 632 So. 2d 669, 672 (Fla. 4th DCA 1994) (noting that the workers' compensation system is "entirely a statutory creation," and observing that "[t]he workers' compensation law involves a legislative balancing of competing interests, creating a system of shared benefits and burdens for its participants").

In interpreting statutes that appear to conflict, the court must harmonize the laws. *Palm Beach Cnty. Canvassing Bd. v. Harris*, 772 So. 2d 1273, 1287 (Fla. 2000); *Stevens v. State*, 127 So. 3d 668, 669 (Fla. 1st DCA 2013); *see also* 2B *Sutherland Statutory Construction* § 51:5 (7th ed. 2019) ("General and special acts: . . . Where one statute deals with a subject in general terms and another deals *with a part of the same subject in a more detailed way*, the two should be harmonized if possible."). To harmonize laws, courts generally apply the canon that a specific statute governing a particular subject area controls over a statute covering the same and other subjects in more general terms. *Sch. Bd. of Palm Beach Cnty. v. Survivors Charter Schs., Inc.*, 3 So. 3d 1220, 1233 (Fla. 2009). Both the majority and the dissent invoked that canon here, with differing perspectives (RS:208-09; RL:205-06 (majority); RS:220-23; RL:217-20 (dissent)). The majority reasoned that "[b]ecause section 559.77(1) thus creates a private cause of action in very specific circumstances, it would constitute an exception to

the more general jurisdictional restrictions of section 440.13(11)(c)." (RS:209; RL:206).

The dissent has the better reading. As Judge Black explained, "the [Workers' Compensation Law] narrowly and specifically addresses workers' compensation reimbursement matters while the FCCPA generally governs consumer debt collection practices." (RS:222; RL:219) (Black, J., dissenting). The billing practices in question are not legitimate only because the Workers' Compensation Act so provides. § 440.13(3)(g) ("The employee is not liable for payment for medical treatment or services provided pursuant to this section . . . ."); § 440.13(13)(a) (Health care providers cannot "collect or receive a fee from an injured employee."). The Workers' Compensation Law includes civil penalties and fines for billing violations. The FCCPA, on the other hand, generally governs and sets forth prohibited consumer debt collection practices across the board. The Workers' Compensation Law, specifically section 440.13(11)(c), is an exception to the general terms of the more expansive debt collection practices outlined in the FCCPA.

Framed another way, any potential conflict between the two statutes can be resolved by applying the canon against "implied repeals." *See generally* 1A *Sutherland Statutory Construction* § 23:9 (7th ed. 2019) ("If two statutes conflict somewhat, courts must, if possible, read them so as to give effect to both, unless

the text or legislative history of the later statute shows that [the legislature] intended to repeal the earlier one and simply failed to do so expressly."). Because the Workers' Compensation Law predates the FCCPA and creates a self-contained system for dealing with covered workers' compensation issues, including reimbursements, vested entirely in a State administrative agency subject to specialized review provisions, the generally applicable, later-in-time FCCPA does not alter the Workers' Compensation Law's jurisdictional scheme—at least as to the subset of covered "reimbursement" cases. Thus, to "harmonize" the conflict in these intersecting statutes, the Court should enforce section 440.13(11)(c)'s longstanding grant of exclusive jurisdiction in "any matters concerning reimbursement" by precluding stand-alone lawsuits under section 559.77(1) that necessarily involve matters concerning reimbursement.

Whether read pursuant to the "specific controls the general" canon or through the implied-repeal analysis, the exclusive jurisdiction grant in section 440.13(11)(c) supplies an exception to the general terms of the more expansive debt collection remedies outlined in the FCCPA. The majority's contrary conclusion—that the FCCPA supersedes the Workers' Compensation Law—frustrates the stated intent of the Workers' Compensation Law. *See Sam Rogers Enters. v. Williams*, 401 So. 2d 1388, 1390-91 (Fla. 1st DCA 1981).

E. Davis waived any argument that her FCCPA claims are not "any matters concerning reimbursement."

It is an elementary principle that "[c]laims of error not raised by an appellant in its initial brief are deemed abandoned." *D.H. v. Adept Cmty. Servs., Inc.*, 271 So. 3d 870, 880 (Fla. 2018). Reversing on the basis of a ground not argued is "'at odds with the structure of the appellate process which requires that a reviewing court ordinarily reverse only on the basis of the specific arguments presented by the appellant.'" *Roop v. State*, 228 So. 3d 633, 642 (Fla. 2d DCA 2017) (quoting *I.R.C. v. State*, 968 So. 2d 583, 588 (Fla. 2d DCA 2007)). Thus, a reviewing court should not engage in sua sponte review of potential arguments not raised by the appellant. *Id.*

By reframing Davis's FCCPA claims and reversing based on an argument Davis never hinted at, much less raised, the majority opinion below did precisely that. For the reasons Judge Black explained, RS:227-29; RL:224-26, this Court need not and should not attempt a similar rescue mission.

Indeed, the majority's opinion is a perfect example of why the waiver rule exists in the first place. Without the benefit of briefing as to the meaning of "any matters concerning reimbursement" in the context of Davis's particular claims, the majority's misguided interpretation of section 440.13(11)(c) was never subject to

adversarial testing. Had it been, both the unnecessary reversal and subsequent recourse to this Court could have been avoided.

CONCLUSION

The Florida Legislature intended for the Workers' Compensation Law to provide a fast and efficient system for workers to receive prompt medical care. As part of that trade-off, the Worker's Compensation Law gave the Department the exclusive jurisdiction over "any matters concerning reimbursement." The Second District's misapplication of that law directly frustrates this legislative intent and the plain terms of the statute.

This Court should quash the decision of the Second District and remand with directions to affirm the dismissals of Davis's complaints.

JANE KREUSLER-WALSH
REBECCA MERCIER VARGAS
STEPHANIE L. SERAFIN
KREUSLER-WALSH, VARGAS & SERAFIN, P.A.
501 South Flagler Drive, Suite 503
West Palm Beach, FL 33401-5913
(561) 659-5455
Primary: janewalsh@kwvsappeals.com
rvargas@kwvsappeals.com
sserafin@kwvsappeals.com
Secondary: eservice@kwvsappeals.com
Counsel for Petitioners, Sheridan Radiology Services of Pinellas, Inc. and Sheridan Healthcare, Inc.

and

CATHERINE E. STETSON, *pro hac vice*
HOGAN LOVELLS US LLP
555 Thirteenth Street, NW
Washington, DC 20004
(202) 637-5600
cate.stetson@hoganlovells.com

and

STEVEN F. BARLEY, *pro hac vice*
HOGAN LOVELLS US LLP
100 International Drive, Suite 2000
Baltimore, MD 21202
(410) 659-2700
steve.barley@hoganlovells.com

and

DAVID S. JOHNSON
SCOTT W. ANDERSON
JOHNSON DABOLL ANDERSON, PLLC
2011 W. Cleveland Street, Suite F
Tampa, FL 33606
(813) 377-2499
djohnson@jdalegal.com
sanderson@jdalegal.com
Counsel for Petitioners, Sheridan Radiology Services of Pinellas, Inc.

and

SUSAN N. EISENBERG
JENNIFER T. WILLIAMS
COZEN O'CONNOR
200 South Biscayne Blvd., Suite 4410
Miami, FL 33131
(305) 704-5940
seisenberg@cozen.com
jtwillams@cozen.com
Counsel for Petitioners, Sheridan Healthcare, Inc.

JAMES L. VANLANDINGHAM
HOGAN LOVELLS US LLP
600 Brickell Avenue, Suite 2700
Miami, FL 33131
(305) 459-6500
james.vanlandingham@hoganlovells.com
Counsel for Petitioners, Laboratory Corporation of America and Laboratory Corporation of America Holdings

By: */s/ Jane Kreusler-Walsh*
JANE KREUSLER-WALSH
Florida Bar No. 272371

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 23rd day of April, 2020, I will electronically file this using the Florida Courts E-Filing Portal, which will serve this filing on:

STUART C. MARKMAN
KRISTIN A. NORSE
JARED M. KRUKAR
KYNES, MARKMAN & FELMAN, P.A.
P.O. Box 3396
Tampa, FL 33601-3396
smarkman@kmf-law.com
knorse@kmf-law.com
jkrukar@kmf-law.com
efilings@kmf-law.com
Appellate Counsel for Respondent, Patty Davis

J. ANDREW MEYER
J. ANDREW MEYER, P.A.
15565 Gulf Boulevard
Redington Beach, FL 33708
andrew@jandrewmeyer.com
Counsel for Respondent, Patty Davis

CHRISTA L. COLLINS
HARMON PARKER, P.A.
110 North 11th Street, 2nd Floor
Tampa, FL 33602
clc@harmonparkerlaw.com
Counsel for Respondent, Patty Davis

CERTIFICATE OF FONT

The Initial Brief of Petitioner has been typed using the 14-point Times New Roman font.

By: */s/ Jane Kreusler-Walsh*
JANE KREUSLER-WALSH
Florida Bar No. 272371