

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT
IN AND FOR MIAMI-DADE COUNTY, FLORIDA

SALVADOR GOMEZ and YANIRA
GOMEZ,

Plaintiffs,

vs.

CASE NO.: 2020-012868-CA-01

FIRST PROTECTIVE INSURANCE
COMPANY D/B/A FRONTLINE
INSURANCE,

Defendant.

_____ /

NOTICE OF APPEAL

NOTICE IS GIVEN that Defendant/Appellant First Protective Insurance Company d/b/a Frontline Insurance (“Frontline”) appeals to the Third District Court of Appeal this Court’s Order on Defendant’s Motion for Entitlement to Attorneys’ Fees and Costs entered February 22, 2023 (the “Final Order”) which denies Frontline’s entitlement to attorneys’ fees following a jury verdict in Frontline’s favor. The nature of the appeal is from a final order. *See Fla. R. App. P. 9.110(a); Yampol v. Turnberry Isle South Condo. Ass’n, Inc.*, 250 So. 3d 835, 837 (Fla. 3d DCA 2018) (“A post-judgment order denying a party’s claim for entitlement to attorney’s fees, however, is an appealable final order.”). A true and correct copy of the Final Order is attached to this Notice.

Following the Final Order, Frontline filed a *Motion for Reconsideration/Rehearing of the Court’s Ruling on Defendant’s Motion for Award of Attorneys’ Fees* on March 3, 2023 (the “Motion for Rehearing”), a true and correct copy of which is also attached to this Notice. Although the pending Motion for Rehearing should toll the deadline for final appeal, Frontline files this Notice in an abundance of caution. In light of the pending Motion for Rehearing, Frontline

RECEIVED, 03/27/2023 09:27:24 AM, Clerk, Third District Court of Appeal

believes this appeal should be held in abeyance pursuant to Rule 9.020(h)(2)(C), Florida Rules of Appellate Procedure.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on March 22, 2023, a true and correct copy of the foregoing was filed with the Clerk of Miami-Dade County by using the Florida Courts e-Filing Portal, which will send an automatic email message to the following parties registered with the e-Filing Portal system: **andrew@vargasgonzalez.com, service6@vargasgonzalez.com, Andrew Vargas, Esq., Vargas Gonzalez Helvia Baldwin, LLP, 815 Ponce De Leon Blvd., 3rd Floor, Coral Gables, FL 33134, Counsel for Plaintiffs.**

By: /s/ Patrick M. Chidnese
PATRICK M. CHIDNESE, ESQ.
B.C.S. Appellate Practice
FBN: 0089783
Appellate Counsel for Defendant
Bickford & Chidnese, LLP
307 S. Willow Ave., Suite 100
Tampa FL 33606
E-Mail: patrick@bcflalaw.com
Secondary E-Mail: april@bcflalaw.com
Tertiary E-Mail: angela@bcflalaw.com
Telephone: (813) 576-0095

STATE OF FLORIDA, COUNTY OF MIAMI-DADE
I HEREBY CERTIFY that the foregoing is a true and correct copy of the
original on file in this office 3-27 AD 20 23
, Clerk of Circuit and County Courts
Deputy Clerk [Signature] 12662



**IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL
CIRCUIT IN AND FOR MIAMI-DADE COUNTY, FLORIDA**

CASE NO: 2020-012868-CA-01

SECTION: CA23

JUDGE: Barbara Areces

Salvador Gomez et al

Plaintiff(s)

vs.

First Protective Insurance Company

Defendant(s)

**ORDER ON DEFENDANT'S MOTION FOR ENTITLEMENT TO ATTORNEYS' FEES
AND COSTS**

THIS Cause having come before the Court on February 15th, 2023 via Zoon Conference, on Defendant's Motion for Award of Attorney's Fees and Costs, and the Court having heard the arguments of counsel, and being otherwise advised in the premises, it is hereby:

ORDERED AND ADJUDGED that:

1. Defendant's Motion for Entitlement to Attorney's Fees and Costs is GRANTED in part, as it pertains to its request for costs, and DENIED in part, as it pertains to its request for attorney's fees.
2. This is a breach of contract action stemming from a first-party property homeowner's insurance claim dispute. On October 14, 2022, a jury returned a verdict in favor of the Defendant.
3. On or about October 22, 2021, prior to the jury verdict, the Defendant had served its Proposal for Settlements upon Plaintiffs ("the Proposals") pursuant to Section 768.79, Florida Statutes and Florida Rule of Civil Procedure 1.442, which was never accepted and deemed rejected. See Fla. R. Civ. P. 1.442(f)(1); Fla. Stat. §768.79(1) & (4).
4. Ordinarily, under these circumstances, the Plaintiffs' failure to accept the Proposals and the jury verdict in the Defendant's favor would entitle the Defendant to recover its fees and costs as of the date of the service of the Proposal from Plaintiffs. However, in this case, the Court finds the proposals served were ambiguous and therefore invalid in that the proposal and attached general release failed to include the date or timeframe for payment on the proposals, if accepted by Plaintiffs. see *Harris v Tiner*, 336 So.3d 1238 (Fla. 2d DCA 2022)
5. Defendant is entitled to its taxable costs. The Court will enter judgment in favor of

Defendant, reserving on the amount of costs.

DONE and ORDERED in Chambers at Miami-Dade County, Florida on this 22nd day of February, 2023.

~~2020-012868-CA-01 02-22-2023 8:59 AM~~

2020-012868-CA-01 02-22-2023 8:59 AM

Hon. Barbara Areces

CIRCUIT COURT JUDGE

Electronically Signed

No Further Judicial Action Required on **THIS MOTION**

CLERK TO **RECLOSE** CASE IF POST JUDGMENT

Electronically Served:

Andrew J Vargas, epleadings@vargasgonzalez.com
Andrew J. Vargas, Esq., Service6@VargasGonzalez.com
Andrew J. Vargas, Esq., Andrew@VargasGonzalez.com
Andrew J. Vargas, Esq., Epleadings@VargasGonzalez.com
James B Chaplin Esq, service@floridamediation.com
Katherine Nicole Buckalew, KBuckalew@VargasGonzalez.com
Katherine Nicole Buckalew, Service10@VargasGonzalez.com
Maria C Medina, mmedina@simonreedlaw.com
Maria C Medina, mfonticiella@simonreedlaw.com
Matthew Lee Baldwin, Service8@VargasGonzalez.com
Matthew Lee Baldwin, Matthew@VargasGonzalez.com
Matthew Lee Baldwin, Bmusillo@VargasGonzalez.com
Melanie D. Sigel, MSigel@simonreedlaw.com
Melanie D. Sigel, tschwartz@simonreedlaw.com
Paige B. Segrera, psegrera@simonreedlaw.com
Paige B. Segrera, kmiller@simonreedlaw.com
Rene M. Delombard, Service1@vargasgonzalez.com
Rene M. Delombard, RDelombard@vargasgonzalez.com
Rene M. Delombard, Epleadings@vargasgonzalez.com

Physically Served:

IN THE CIRCUIT COURT OF THE 11TH
JUDICIAL CIRCUIT IN AND FOR
MIAMI-DADE COUNTY, FLORIDA

SALVADOR GOMEZ and YANIRA
GOMEZ,

CASE NO: 2020-012868-CA-01

Plaintiffs,

v.

FIRST PROTECTIVE INSURANCE
COMPANY D/B/A FRONTLINE
INSURANCE,

Defendant,

_____/

**MOTION FOR RECONSIDERATION/REHEARING OF THE COURT'S RULING ON
DEFENDANT'S MOTION FOR AWARD OF ATTORNEYS' FEES**

Defendant, FIRST PROTECTIVE INSURANCE COMPANY D/B/A FRONTLINE INSURANCE ("Frontline"), pursuant to Fla.R.Civ.Pro. 1.530, Fla.R.Civ.Pro 1.442 and other applicable rules, by and through undersigned counsel, hereby respectfully submits this Motion for Reconsideration/Rehearing of the Court's Ruling on Defendant's Motion for Award of Attorneys' Fees and Costs against Plaintiffs, SALVADOR AND YANIRA GOMEZ ("Plaintiffs"), and Final Judgment and in support thereof, states as follows:

PROCEDURAL HISTORY/BACKGROUND

1. The trial in this matter took place from October 11, 2022 through October 14, 2022.
2. On October 14, 2022, the jury rendered a verdict in favor of Defendant, Frontline. (See *Verdict*, attached hereto as **Exhibit "A"**).
3. Accordingly, Frontline is the prevailing party in this action.

4. On or about October 22, 2021, Frontline served valid and enforceable Proposals for Settlement upon Plaintiffs. (See Proposals for Settlement to Salvador Gomez and Yanira Gomez attached hereto as **Composite Exhibit “B”**).

5. In addition, Defendant timely filed its Motion For Award of Attorney’s Fees and Costs, along with its Affidavit, on November 14, 2022. (See Motion for Award of Attorney’s Fees and Costs, attached hereto as **Exhibit “C”**).

6. The response and opposition presented by Plaintiffs against entry of an award of Fees was limited to the alleged invalidity of the proposal due to a release being attached to same. Plaintiffs argued that even though Fla.R.Civ.P 1.442 was amended with an effective date of July 1, 2022, the law was actually retroactive to a case from 2017, mentioned in the amendment. *Diecidue v. Lewis*, 223 So3d 1015(Fla 2d DCA 2017). Notably, however, the Amendment to Fla.R.Civ.P. 1.442 specifically delineates the effective date of the amendment as July 1, 2022 and does not make the amendment retroactive.¹

7. The Court heard argument on February 15, 2023 on Defendant’s Motion for Entry of Attorney’s Fees and Costs as well as, Plaintiffs Response and Motion to Strike Defendant’s Motion for Attorney’s Fees. (See, Transcript, attached hereto as **Exhibit “D”**).

8. On February 22, 2023, this Court entered its order granting Defendant’s motion as to costs, but denied Defendant’s motion as to Attorney’s Fees based on the Court’s finding that the proposals were ambiguous in that they “failed to include the date and timeframe for payment on the proposals, if accepted by Plaintiffs.” The Court cited *Harris v. Tiner*, 336 So3d 1238 (Fla.

¹ The language contained within the amendment of Rule 1.442 from the *Diecidue* case, is contained within the concurring opinion, and is not the holding of the case from 2017. In fact, countless proposals have been upheld by all districts following the 2017 *Diecidue* case, which contained and attached a release with the proposal, up until the amendment took effect in July of 2022.

2d DCA 2022), in its ruling. (See *Order on Defendant's Motion for Entitlement to Attorney's Fees and Costs*, attached hereto as **Exhibit "E"**).

9. In addition, this Court entered a Final Judgment on February 22, 2023, wherein the Court awards costs to Defendant and reserves jurisdiction to determine the amount of the costs. (See *Final Judgment*, attached hereto as **Exhibit "F"**)

10. As more fully detailed herein, Defendant respectfully submits that the *Harris v. Tiner* case is not applicable here and does not expand the amendment of Fla.R.Civ.P 1.442, to require that all proposals include a timeframe for payment if the proposal is accepted. As such, the proposals for settlement and release served by Defendant in October 2021, complied with the law and rules applicable to same in October 2021, and are valid and should be enforced at this time.

11. Therefore, Frontline respectfully requests this court reconsider its ruling, as Defendant is entitled to an award of its attorneys' fees pursuant to a valid and enforceable proposal for settlement that was rejected by Plaintiffs.

MEMORANDUM OF LAW

A. It is within the Court's inherent authority to Reconsider/Rehear its ruling on Defendant's Motion for Entitlement to Attorney's Fees

The purpose of a motion for rehearing, pursuant to Rule 1.530 is "to give the trial court an opportunity to consider matters which it overlooked or failed to consider ... and to correct any error if it becomes convinced that it has erred." *Gaffney v. Gaffney*, 965 So. 2d 1217, 1221 (Fla. 4th DCA 2007) (quoting *Carollo v. Carollo*, 920 So. 2d 16, 19 (Fla. 3d DCA 2004)). Furthermore, the Florida Rules of Civil Procedure provides mechanisms by which a trial court can reconsider its prior decision. The purpose of a motion for rehearing or reconsideration is to give the trial court an opportunity to consider matters, which it overlooked or failed to consider.

Pingree v. Quaintance, 394 So. 2d 161 (Fla. 1st DCA 1981). In fact, the trial court has broad discretion to grant rehearing and reconsider its decision in order to correct any errors. *Richmond v. State Title & Guaranty Co.*, 553 So. 2d 1241 (Fla. 3d DCA 1989).

In the alternative, rather than constituting a motion for rehearing under Fla. R. Civ. Pro. 1.530, a motion directed to a non-final order is termed a “Motion for Reconsideration” based upon the trial court’s inherent authority to reconsider and alter or retract orders prior to the entry of final judgment. *See Bettez v. City of Miami*, 510 So. 2d 1242, 1242-43 (Fla. 3d DCA 1987).

B. Frontline is Entitled to an Award of its Reasonable Attorneys’ Fees as the proposals served upon Plaintiffs are valid and comply with the rules and law applicable at the time they were served.

In *Tower Hill v. Kushch*, 335 So3d 743 (Fla. 4th DCA 2022), the Court reviewed alleged ambiguities in a proposal for settlement and re-iterated that 1.442 required, in February of 2022, the proposal provide all relevant conditions and all **nonmonetary terms** of the offer be stated with *particularity.*” *Nichols v. State Farm Mut.*, 851 So. 2d 742, 746 (Fla. 5th DCA 2003). However, the rules do not demand that every potential ambiguity be solved; rather, the **proposal** must “be sufficiently clear and definite to allow the offeree to make an informed decision without needing clarification.” *State Farm Mut. Auto. Ins. Co. v. Nichols*, 932 So. 2d 1067, 1079 (Fla. 2006). Further, **Proposals for settlement** must be reviewed as a whole. *Kiefer v. Sunset Beach Invs., LLC*, 207 So. 3d 1008, 1011 (Fla. 4th DCA 2017). Finally, whenever possible, all statements in a **proposal for settlement** should be read together to give effect to every statement. *See World Vacation Travel, S.A., de C.V. v. Brooker*, 799 So. 2d 410, 412 (Fla. 3d DCA 2001).

Notably, this was the rule and law in effect at the time that Frontline served its proposals upon Plaintiffs. As such, the proposals included the attached release which contained all non-monetary terms, with particularity, as required. Therefore, the served proposals satisfied the requirement

that the proposals provide the Plaintiffs with all information necessary for the Plaintiffs to make an informed decision. In fact, the *Tower Hill v. Kuschch* Court, citing from *Kiefer*, specifically noted that “[P]arties should not ‘nit-pick’ the validity of a **proposal for settlement** based on allegations of ambiguity unless the asserted ambiguity could ‘reasonably affect the offeree’s decision’ on whether to accept the **proposal for settlement.**”) citations omitted.

1) Frontline’s proposals were not subject to the amendment to Fla.R.Civ.P. 1.442 which became effective July 1, 2022 and was not made retroactive.

As detailed herein, it is clear that the proposals served by Frontline in October 2021, fully complied with the rule and law applicable at the time. Furthermore, it is also clear that the amendment to Rule 1.442 did not take effect until July 1, 2022 and was not made retroactive. See, *IN Re: Amendments to the Florida Rules of Civil Procedure 1.442*, 345 So3d 845 (2022). Therefore, Frontline’s proposals with attached releases were in full compliance with the rule, at the time they were served and were not rendered invalid by the amendment that took effect long after the proposals were served.

2) *Harris v. Tiner* is not binding and is inapposite in the case at bar.

This Court relied on *Harris v. Tiner, Id.*, in finding the proposals served by Frontline to Plaintiffs were ambiguous in that the proposals do not contain a specific timeframe for payment on the proposals. However, there is no such requirement in the rule that such detail be included. Further, the facts of *Harris v. Tiner* are distinguishable in that the Defendant in *Harris* served a proposal that was ambiguous and fatally flawed as follows:

Here, Tiner's 2018 “Proposal for Settlement/Offer of Judgment” was fatally amorphous. It stated simply that its amount was \$100,000. It did not demand that the Harrises consent to a judgment in that amount, as contemplated in section 768.79(1), nor did it require them to pay that sum nor specify when payment must be made nor obligate Tiner to dismiss his claims upon receipt of payment. *Id* at 1241.

Notably, the timeframe for payment, mentioned by the court, is detailed in a list of the issues the court found with the proposal in *Harris*, which included the fact that the proposal simply stated it was for \$100,000 without any additional information related to who was to pay that sum and to whom it was to be paid and when. Notably, the *Harris* case involved a motorist accident where Tiner sued Nancy and William Harris. He served a *joint proposal* [emphasis added] on Nancy and William and then a single proposal on Nancy only. In that context, the joint proposal failed to delineate who was to pay the offer, to whom it was to be paid and when. In that context, the Court found the proposal to be ambiguous as it was not clear who was getting paid and when. However, the holding of that case, does not expand the rule to require that all proposals include the timeframe for payment of a proposal for settlement. In fact, countless proposals have been upheld, which did not contain a specified date for payment if the proposal is accepted.

Finally, the timeframe for payment, in a proposal for settlement, is not necessary or required in that the acceptance of the proposal and therefore, settlement of the claim is subject to Florida Statute 627.4265 which delineates the deadline for payment once the settlement/agreement is reached. The statute provides as follows:

627.4265 Payment of settlement. - In any case in which a person and an insurer have agreed in writing to the settlement of a claim, the insurer shall tender payment according to the terms of the agreement no later than 20 days after such settlement is reached. The tender of payment may be conditioned upon execution by such person of a release mutually agreeable to the insurer and the claimant, but if the payment is not tendered within 20 days, or such other date as the agreement may provide, it shall bear interest at a rate of 12 percent per year from the date of the agreement; however, if the tender of payment is conditioned upon the execution of a release, the interest shall not begin to accrue until the executed release is tendered to the insurer.

CONCLUSION

The applicable Rules and Law support Defendant's contention that the proposals for settlement served upon Plaintiffs in this action are valid and enforceable and therefore Defendant

is entitled to entry of an award of reasonable fees. Notably, the Amendment to Fla.R.Civ.P. 1.442, effective on July 1, 2022, is intended to “align rule 1.442 with the substantive elements of Florida's settlement proposal statutes which does not provide for the inclusion of nonmonetary terms in a proposal for settlement. Instead, section 768.79 simply contemplates a comparison of monetary amounts, with subsections (2)(c)-(d) of that statute providing only that a settlement offer must “[s]tate its total amount” and “[s]tate with particularity the amount offered to settle a claim for punitive damages, if any.” However, prior to the amendment – Rule 1.442(C) required the offeror to “state with particularity any relevant conditions” of the proposal and to “**state with particularity all nonmonetary terms of the proposal.**” “The term ‘particularity’ as used in rule 1.442(c) means that the offeror must provide ‘specific details’ of any condition or nonmonetary term.” *Nichols, Id.* The proposals and attached release in this action comply with this requirement.

Therefore, the Proposals for Settlement, served on October 22, 2021, on each Plaintiff in this action, are valid and enforceable. They complied with all applicable requirements as they were served more than 90 days after the action commenced, and contained all of the terms required by Florida Rule of Civil Procedure 1.442. Because Defendant obtained a full Defense Verdict, the verdict is definitely “at least 25 percent less than the amount of the offer” of settlement, and Frontline is entitled to recover its reasonable attorneys’ fees and costs. As set forth in the Affidavit of Maria C. Medina, Frontline seeks an award of \$50,254.50 in attorneys’ fees necessarily expended in its defense of this matter since the date the Proposals for Settlement were served.

WHEREFORE, Defendant, FIRST PROTECTIVE INSURANCE COMPANY D/B/A FRONTLINE INSURANCE respectfully requests that the Court (1) reconsider its ruling on the award of attorney’s fees, (2) amend the final judgment to include an award of reasonable attorney’s fees and (3) grant such further relief as is deemed just and proper under the circumstances.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been served electronically through E-Portal on this March 3, 2023, with the Clerk of Miami-Dade County by using the Florida Courts eFiling Portal and serving via Electronic Service to: Andrew Vargas, Vargas Gonzalez Helvia Baldwin, LLP, 815 Ponce De Leon Blvd., 3rd Floor, Coral Gables, Florida 33134; service6@VargasGonzalez.com, Andrew@VargasGonzalez.com.

SIMON, REED & SALAZAR, P.A.

Attorneys for Defendant Frontline

Two Datan Center - Suite 1209

9130 S. Dadeland Blvd.

Miami, Florida 33156

Tel.: (305) 670-0776

Fax: (305) 670-0731

By: /s/ Maria C. Medina

MARIA C. MEDINA

Florida Bar No. 970085

Primary e-mail: mmedina@simonreedlaw.com

Secondary e-mail: mfonticiella@simonreedlaw.com

MELANIE D. SIGEL

Florida Bar No. 123932

Primary e-mail: msigel@simonreedlaw.com

Secondary e-mail: tschwartz@simonreedlaw.com

EXHIBIT “A”

IN THE CIRCUIT COURT OF THE
11TH JUDICIAL CIRCUIT IN AND
FOR MIAMI-DADE COUNTY,
FLORIDA

SALVADOR GOMEZ and YANIRA
GOMEZ,

CASE NO: 2020-012868-CA-01

Plaintiffs,

v.

FIRST PROTECTIVE INSURANCE
COMPANY D/B/A FRONTLINE
INSURANCE,

Defendant,

_____ /

VERDICT

We, the Jury, return the following verdict:

1. Did Salvador and Yanira Gomez prove that the damage claimed occurred during the policy period alleged?

YES NO

If your answer to Question 1 is "NO" your verdict is for Defendant on this claim, and you should not proceed further except to date and sign this verdict form and return it to the courtroom.

If your answer to Question 1 is "YES," proceed to Question 2.

2. Did the Plaintiffs prove by the greater weight of the evidence that the Defendant was not prejudiced by Plaintiffs' failure to promptly report the claim?

YES NO

If your answer to question 2 is "NO," your verdict is for Defendant, and you should not proceed further except to date and sign this Verdict Form and return it to the courtroom.

If your answer to question 2 is "YES," please answer question 3.

3. Did Frontline Insurance prove the damages claimed are excluded under the terms of the policy?

YES NO

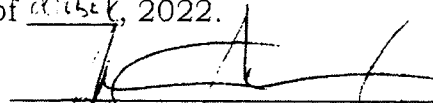
If your answer to Question 3 is "YES," your verdict is for Frontline Insurance on this claim, and you should not proceed further except to date and sign this verdict form and return it to the courtroom.

If your answer to Question 3 is "NO," proceed to Question 4.

4. What is the total amount of money that is the reasonable and necessary amount for the Plaintiffs to repair their home to its pre-loss condition?

\$ _____

SO SAY WE ALL, this 14th day of NOVEMBER, 2022.


Foreperson [signature]

JOSE A PEREZ
Foreperson [print name]

**COMPOSITE
EXHIBIT “B”**

IN THE CIRCUIT COURT OF THE 11TH
JUDICIAL CIRCUIT IN AND FOR
MIAMI-DADE COUNTY, FLORIDA

SALVADOR GOMEZ and YANIRA
GOMEZ,

CASE NO: 2020-012868-CA-01

Plaintiffs,

v.

FIRST PROTECTIVE INSURANCE
COMPANY D/B/A FRONTLINE
INSURANCE,

Defendant,

**NOTICE OF SERVING PROPOSAL FOR SETTLEMENT TO
PLAINTIFF, SALVADOR GOMEZ**

Defendant, FIRST PROTECTIVE INSURANCE COMPANY D/B/A FRONTLINE INSURANCE (“FRONTLINE”), by and through undersigned counsel and pursuant to Florida Statute §768.79 and Florida Rule of Civil Procedure 1.442, hereby files this Notice of Serving Proposal for Settlement to Plaintiff, SALVADOR GOMEZ.

[Certificate of Service on Next Page]

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been served electronically through E-Portal on this October 22, 2021, with the Clerk of Miami-Dade County by using the Florida Courts eFiling Portal and serving via Electronic Service to: Beatriz Benitez, Esq., Vargas Gonzalez Helvia Baldwin, LLP, 815 Ponce De Leon Blvd., 3rd Floor, Coral Gables, Florida 33134; service10@VargasGonzalez.com, bbenitez@VargasGonzalez.com.

SIMON, REED & SALAZAR, P.A.

Attorneys for Defendant Frontline

Two Datran Center - Suite 1209

9130 S. Dadeland Blvd.

Miami, Florida 33156

Tel.: (305) 670-0776

Fax: (305) 670-0731

By: */s/ Maria C. Medina* _____

MARIA C. MEDINA

Florida Bar No. 970085

Primary Email: mmedina@simonreedlaw.com

Secondary Email: mfonticiella@simonreedlaw.com

KAITLYN DUGAS

Florida Bar No: 1004136

Primary Email: kdugas@simonreedlaw.com

Secondary Email: cdiaz@simonreedlaw.com

IN THE CIRCUIT COURT OF THE 11TH
JUDICIAL CIRCUIT IN AND FOR
MIAMI-DADE COUNTY, FLORIDA

SALVADOR GOMEZ and YANIRA
GOMEZ,

CASE NO: 2020-012868-CA-01

Plaintiffs,

v.

FIRST PROTECTIVE INSURANCE
COMPANY D/B/A FRONTLINE
INSURANCE,

Defendant,

PROPOSAL FOR SETTLEMENT TO PLAINTIFF, SALVADOR GOMEZ

Defendant, FIRST PROTECTIVE INSURANCE COMPANY D/B/A FRONTLINE INSURANCE (“FRONTLINE”), hereby serves the following Proposal for Settlement upon the Plaintiff, SALVADOR GOMEZ:

1. This proposal is made pursuant to Florida Rule of Civil Procedure 1.442, Florida Statute §768.79, and applicable Florida law.
2. This proposal is made by the Defendant, FRONTLINE, to the Plaintiff, SALVADOR GOMEZ.
3. This proposal is to resolve any and all claims and damages asserted by the Plaintiff, SALVADOR GOMEZ, against Defendant, FRONTLINE, and only Defendant, FRONTLINE, arising out of the cause of action which is the subject matter of this lawsuit, and only this lawsuit.
4. The total amount of this proposal is TWO THOUSAND FIVE HUNDRED DOLLARS AND ZERO CENTS (\$2,500.00), and is made alternatively to, and not in addition to, any other offer.

5. The relevant conditions of this proposal are that this offer is to be construed as including any and all damages that may be awarded to Plaintiff, SALVADOR GOMEZ, against Defendant, FRONTLINE, in a final judgment including costs and attorney's fees in this case and this case only.

6. The non-monetary terms of this proposal are that the Plaintiff, SALVADOR GOMEZ, will execute a full and final release of all claims he has or could have for property damage and attorney's fees and costs as to this case only, agreeing to release the Defendant, FRONTLINE, from all claims he has or could have arising out of the cause of action which is the subject matter of this lawsuit and only this lawsuit. The non-monetary terms and conditions of this offer are set forth with particularity in the release attached hereto and incorporated by reference as if fully set forth herein as **Exhibit "A."**

7. Plaintiff, SALVADOR GOMEZ, and Defendant, FRONTLINE, will execute the Joint Stipulation for Order of Dismissal with Prejudice attached hereto as **Exhibit "B"**, and will submit to the court the Proposed Order for Final Dismissal with Prejudice attached hereto as **Exhibit "C"**.

8. No punitive damages are claimed in this action.

9. It is believed that attorney's fees are a part of Plaintiff, SALVADOR GOMEZ's legal claim. Should attorney's fees be allowed, the Proposal for Settlement includes such attorney's fees and costs. (See paragraph #5 above.)

10. This Proposal is being made in an effort to resolve the case and avoid future costs and fees. If there are any questions about any of the above terms, you are encouraged to submit your questions, in writing. An attempt to answer your questions will be made whenever possible.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been served electronically on October 22, 2021 to: Beatriz Benitez, Esq., Vargas Gonzalez Helvia Baldwin, LLP, 815 Ponce De Leon Blvd., 3rd Floor, Coral Gables, Florida 33134; service10@VargasGonzalez.com, bbenitez@VargasGonzalez.com.

SIMON, REED & SALAZAR, P.A.

Attorneys for Defendant Frontline

Two Datan Center - Suite 1209

9130 S. Dadeland Blvd.

Miami, Florida 33156

Tel.: (305) 670-0776

Fax: (305) 670-0731

By: /s/ Maria C. Medina

MARIA C. MEDINA

Florida Bar No. 970085

Primary Email: mmedina@simonreedlaw.com

Secondary Email: mfonticiella@simonreedlaw.com

KAITLYN DUGAS

Florida Bar No: 1004136

Primary Email: kdugas@simonreedlaw.com

Secondary Email: cdiaz@simonreedlaw.com

EXHIBIT “A”

IN THE CIRCUIT COURT OF THE 11TH
JUDICIAL CIRCUIT IN AND FOR
MIAMI-DADE COUNTY, FLORIDA

SALVADOR GOMEZ and YANIRA
GOMEZ,

CASE NO: 2020-012868-CA-01

Plaintiffs,

v.

FIRST PROTECTIVE INSURANCE
COMPANY D/B/A FRONTLINE
INSURANCE,

Defendant,

GENERAL RELEASE

For and in consideration of the sum of TWO THOUSAND FIVE HUNDRED DOLLARS AND ZERO CENTS (\$2,500.00), *inclusive* of all attorney's fees and costs, and other good and valuable consideration, receipt whereof is hereby acknowledged, SALVADOR GOMEZ, his respective principals, heirs, guardians, executors, administrators, agents, attorneys-in-fact, assigns (hereinafter referred to as "Releasor"), being under no legal disability, does hereby release, acquit and forever discharge, and for his respective heirs, guardians, executors, administrators agents, attorneys-in-fact, assigns, does hereby remise, release and forever discharge FIRST PROTECTIVE INSURANCE COMPANY D/B/A FRONTLINE INSURANCE (hereinafter referred to as "FRONTLINE") and its respective successors, parent corporations, partners, related entities, affiliates, shareholders, principals, owners, officers, directors, or assigns, agents, adjusters, servants, employees, attorneys, contractors or other representatives of whatever nature (hereinafter collectively the "Releasees"), of and from any and all rights, claims, demands, debts, damages, costs, actions, causes of action, suit or suits, controversies, sum or sums of money,

including but not limited to any claim for property damage, personal property damage, expenses, attorney's fees, costs and compensation, on account of, or in any way growing out of, any and all known and unknown, foreseen and unforeseen, loss or damage, and the consequences thereof, including attorney's fees and court costs, resulting or to result from any and all claims asserted by SALVADOR GOMEZ in the above referenced lawsuit, including the subject claim made by Releasor under his homeowners insurance policy issued by FRONTLINE bearing policy number FPH3-163188 relating to the property located at 15912 SW 100th Lane, Miami, Florida 33196 and arising out of the loss alleged in the lawsuit styled above. This Release is a release of all claims asserted by the Releasor in this lawsuit, and this lawsuit alone.

It is further understood and agreed that this settlement is the compromise of a disputed claim and that the payment is not to be construed as an admission of liability or confession of judgment on the part of the Releasees, by whom all rights and defenses under the applicable insurance policy and law are expressly reserved.

This Release is made to induce the said Releasees to enter into such settlement and pay said sum of money to the Releasor without securing additional releases, releases of lien, satisfaction of lien or other discharge of liability from third parties.

Releasor represents and warrants that he is the sole and legal owner of all right, title and interest in and to the claims, the insurance proceeds and matters which he has released herein, and that he has not heretofore assigned or transferred, or purported or attempted to assign or transfer, to any person or entity any of his rights in or to the same. The foregoing specifically includes, by way of example and not limitation, any claims for attorney's fees, client costs and/or any other litigation or related expenses heretofore incurred by Releasor related to the Releasees or any party to this release or related to the claims and matters which he has released herein and the civil action

styled above, and any claims for any costs or fees for any other services of any nature whatsoever related to the claims and matters which he has released herein.

Releasor agrees to dismiss the civil action styled above with prejudice upon receipt of the aforementioned funds by his counsel.

In entering into this Release, it is understood and agreed that Releasor relied wholly upon his own judgment, belief and knowledge as to the nature and extent of his damages and claims, and any liability therefore, and this Release is made without reliance upon any statement or representation of Releasees, or their representatives or attorneys, or by any person by them employed.

WITNESS our hands and seal this _____ day of _____, 2021.

[Signature on Next Page]

CAUTION!!! READ CAREFULLY BEFORE SIGNING

Witness

SALVADOR GOMEZ

STATE OF FLORIDA)
)
)ss:
COUNTY OF _____)

The foregoing instrument was acknowledged before me, this _____ day of _____, 2021 by _____, who is personally known to me or who has produced _____ (type of identification/drivers license) as identification and who did (did not) take an oath.

(SEAL)

Signature of Person Taking Acknowledgment

Name of Officer Taking Acknowledgment

Notary Public

Title or Rank

EXHIBIT “B”

IN THE CIRCUIT COURT OF THE 11TH
JUDICIAL CIRCUIT IN AND FOR
MIAMI-DADE COUNTY, FLORIDA

SALVADOR GOMEZ and YANIRA
GOMEZ,

CASE NO: 2020-012868-CA-01

Plaintiffs,

v.

FIRST PROTECTIVE INSURANCE
COMPANY D/B/A FRONTLINE
INSURANCE,

Defendant,

JOINT STIPULATION FOR FINAL ORDER OF DISMISSAL WITH PREJUDICE

Plaintiff, SALVADOR GOMEZ, and Defendant, FIRST PROTECTIVE INSURANCE COMPANY D/B/A FRONTLINE INSURANCE, do hereby stipulate to the dismissal with prejudice of all of Plaintiff's, SALVADOR GOMEZ, claims against Defendant, FIRST PROTECTIVE INSURANCE COMPANY D/B/A FRONTLINE INSURANCE, in this litigation.

Each party is to bear its own attorney's fees and costs.

Dated this ____ day of _____, 2021.

Margaret E. Garner, Esq.
Majd Asaad, Esq.
Kanner & Pinaluga, P.A.
Attorneys for Plaintiffs
925 S. Federal Highway, Sixth Floor
Boca Raton, Florida 33432
Tel.: (561) 424-0032

By: _____
Margaret E. Garner, Esq.
Florida Bar No: 85908
Majd Asaad, Esq.
Florida Bar No.: 117596

Maria C. Medina, Esq.
Kaitlyn Dugas, Esq.
Simon, Reed & Salazar, P.A.
Attorneys for Defendant
9130 S. Dadeland Blvd., Suite 1209
Miami, Florida 33156
Tel.: (305) 670-0776

By: _____
Maria C. Medina, Esq.
Florida Bar No.: 970085
Kaitlyn Dugas, Esq.
Florida Bar No.: 1004136

EXHIBIT “C”

IN THE CIRCUIT COURT OF THE 11TH
JUDICIAL CIRCUIT IN AND FOR
MIAMI-DADE COUNTY, FLORIDA

SALVADOR GOMEZ and YANIRA
GOMEZ,

CASE NO: 2020-012868-CA-01

Plaintiffs,

v.

FIRST PROTECTIVE INSURANCE
COMPANY D/B/A FRONTLINE
INSURANCE,

Defendant,

_____ /

FINAL ORDER OF DISMISSAL WITH PREJUDICE

THIS CAUSE having come before this Court on the Plaintiff, SALVADOR GOMEZ, and Defendant's, FIRST PROTECTIVE INSURANCE COMPANY D/B/A FRONTLINE INSURANCE, Joint Stipulation for Final Order of Dismissal With Prejudice, it is hereby:

ORDERED AND ADJUDGED that the Joint Stipulation for Final Order of Dismissal with Prejudice is hereby approved, and all claims filed against Defendant, FIRST PROTECTIVE INSURANCE COMPANY D/B/A FRONTLINE INSURANCE, by Plaintiff, SALVADOR GOMEZ, are hereby dismissed with prejudice, with each party to bear its own attorney's fees and costs.

DONE AND ORDERED in Chambers in Miami-Dade County, Florida this _____ day of _____, 2021.

Circuit Court Judge

Copies furnished to:
Maria C. Medina, Esq.
Beatriz Benitez, Esq.

IN THE CIRCUIT COURT OF THE 11TH
JUDICIAL CIRCUIT IN AND FOR
MIAMI-DADE COUNTY, FLORIDA

SALVADOR GOMEZ and YANIRA
GOMEZ,

CASE NO: 2020-012868-CA-01

Plaintiffs,

v.

FIRST PROTECTIVE INSURANCE
COMPANY D/B/A FRONTLINE
INSURANCE,

Defendant,

**NOTICE OF SERVING PROPOSAL FOR SETTLEMENT TO
PLAINTIFF, YANIRA GOMEZ**

Defendant, FIRST PROTECTIVE INSURANCE COMPANY D/B/A FRONTLINE INSURANCE (“FRONTLINE”), by and through undersigned counsel and pursuant to Florida Statute §768.79 and Florida Rule of Civil Procedure 1.442, hereby files this Notice of Serving Proposal for Settlement to Plaintiff, YANIRA GOMEZ.

[Certificate of Service on Next Page]

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been served electronically through E-Portal on this October 22, 2021, with the Clerk of Miami-Dade County by using the Florida Courts eFiling Portal and serving via Electronic Service to: Beatriz Benitez, Esq., Vargas Gonzalez Helvia Baldwin, LLP, 815 Ponce De Leon Blvd., 3rd Floor, Coral Gables, Florida 33134; service10@VargasGonzalez.com, bbenitez@VargasGonzalez.com.

SIMON, REED & SALAZAR, P.A.

Attorneys for Defendant Frontline

Two Datran Center - Suite 1209

9130 S. Dadeland Blvd.

Miami, Florida 33156

Tel.: (305) 670-0776

Fax: (305) 670-0731

By: /s/ Maria C. Medina

MARIA C. MEDINA

Florida Bar No. 970085

Primary Email: mmedina@simonreedlaw.com

Secondary Email: mfonticiella@simonreedlaw.com

KAITLYN DUGAS

Florida Bar No: 1004136

Primary Email: kdugas@simonreedlaw.com

Secondary Email: cdiaz@simonreedlaw.com

IN THE CIRCUIT COURT OF THE 11TH
JUDICIAL CIRCUIT IN AND FOR
MIAMI-DADE COUNTY, FLORIDA

SALVADOR GOMEZ and YANIRA
GOMEZ,

CASE NO: 2020-012868-CA-01

Plaintiffs,

v.

FIRST PROTECTIVE INSURANCE
COMPANY D/B/A FRONTLINE
INSURANCE,

Defendant,

PROPOSAL FOR SETTLEMENT TO PLAINTIFF, YANIRA GOMEZ

Defendant, FIRST PROTECTIVE INSURANCE COMPANY D/B/A FRONTLINE INSURANCE (hereinafter "FRONTLINE"), hereby serves the following Proposal for Settlement upon the Plaintiff, YANIRA GOMEZ:

1. This proposal is made pursuant to Florida Rule of Civil Procedure 1.442, Florida Statute §768.79, and applicable Florida law.
2. This proposal is made by the Defendant, FRONTLINE, to the Plaintiff, YANIRA GOMEZ.
3. This proposal is to resolve any and all claims and damages asserted by the Plaintiff, YANIRA GOMEZ against Defendant, FRONTLINE, and only Defendant, FRONTLINE, arising out of the cause of action which is the subject matter of this lawsuit, and only this lawsuit.
4. The total amount of this proposal is TWO THOUSAND FIVE HUNDRED DOLLARS AND ZERO CENTS (\$2,500.00), and is made alternatively to, and not in addition to, any other offer.

5. The relevant conditions of this proposal are that this offer is to be construed as including any and all damages that may be awarded to Plaintiff, YANIRA GOMEZ, against Defendant, FRONTLINE, in a final judgment including costs and attorney's fees in this case and this case only.

6. The non-monetary terms of this proposal are that the Plaintiff, YANIRA GOMEZ, will execute a full and final release of all claims she has or could have for property damage and attorney's fees and costs as to this case only, agreeing to release the Defendant, FRONTLINE, from all claims she has or could have arising out of the cause of action which is the subject matter of this lawsuit and only this lawsuit. The non-monetary terms and conditions of this offer are set forth with particularity in the release attached hereto and incorporated by reference as if fully set forth herein as **Exhibit "A."**

7. Plaintiff, YANIRA GOMEZ, and Defendant, FRONTLINE, will execute the Joint Stipulation for Order of Dismissal with Prejudice attached hereto as **Exhibit "B"**, and will submit to the court the Proposed Order for Final Dismissal with Prejudice attached hereto as **Exhibit "C"**.

8. No punitive damages are claimed in this action.

9. It is believed that attorney's fees are a part of Plaintiff, YANIRA GOMEZ's, legal claim. Should attorney's fees be allowed, the Proposal for Settlement includes such attorney's fees and costs. (See paragraph #5 above.)

10. This Proposal is being made in an effort to resolve the case and avoid future costs and fees. If there are any questions about any of the above terms, you are encouraged to submit your questions, in writing. An attempt to answer your questions will be made whenever possible.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been served electronically on October 22, 2021 to: Beatriz Benitez, Esq., Vargas Gonzalez Helvia Baldwin, LLP, 815 Ponce De Leon Blvd., 3rd Floor, Coral Gables, Florida 33134; service10@VargasGonzalez.com, bbenitez@VargasGonzalez.com.

SIMON, REED & SALAZAR, P.A.

Attorneys for Defendant Frontline

Two Datran Center - Suite 1209

9130 S. Dadeland Blvd.

Miami, Florida 33156

Tel.: (305) 670-0776

Fax: (305) 670-0731

By: /s/ Maria C. Medina

MARIA C. MEDINA

Florida Bar No. 970085

Primary Email: mmedina@simonreedlaw.com

Secondary Email: mfonticiella@simonreedlaw.com

KAITLYN DUGAS

Florida Bar No: 1004136

Primary Email: kdugas@simonreedlaw.com

Secondary Email: cdiaz@simonreedlaw.com

EXHIBIT “A”

IN THE CIRCUIT COURT OF THE 11TH
JUDICIAL CIRCUIT IN AND FOR
MIAMI-DADE COUNTY, FLORIDA

SALVADOR GOMEZ and YANIRA
GOMEZ,

CASE NO: 2020-012868-CA-01

Plaintiffs,

v.

FIRST PROTECTIVE INSURANCE
COMPANY D/B/A FRONTLINE
INSURANCE,

Defendant,

GENERAL RELEASE

For and in consideration of the sum of TWO THOUSAND FIVE HUNDRED DOLLARS AND ZERO CENTS (\$2,500.00), *inclusive* of all attorney's fees and costs, and other good and valuable consideration, receipt whereof is hereby acknowledged, YANIRA GOMEZ, her respective principals, heirs, guardians, executors, administrators, agents, attorneys-in-fact, assigns (hereinafter referred to as "Releasor"), being under no legal disability, does hereby release, acquit and forever discharge, and for her respective heirs, guardians, executors, administrators agents, attorneys-in-fact, assigns, does hereby remise, release and forever discharge FIRST PROTECTIVE INSURANCE COMPANY D/B/A FRONTLINE INSURANCE (hereinafter referred to as "FRONTLINE") and its respective successors, parent corporations, partners, related entities, affiliates, shareholders, principals, owners, officers, directors, or assigns, agents, adjusters, servants, employees, attorneys, contractors or other representatives of whatever nature (hereinafter collectively the "Releasees"), of and from any and all rights, claims, demands, debts, damages, costs, actions, causes of action, suit or suits, controversies, sum or sums of money,

including but not limited to any claim for property damage, personal property damage, expenses, attorney's fees, costs and compensation, on account of, or in any way growing out of, any and all known and unknown, foreseen and unforeseen, loss or damage, and the consequences thereof, including attorney's fees and court costs, resulting or to result from any and all claims asserted by YANIRA GOMEZ in the above referenced lawsuit, including the subject claim made by Releasor under her homeowners insurance policy issued by FRONTLINE bearing policy number FPH3-163188 relating to the property located at 15912 SW 100th Lane, Miami, Florida 33196 and arising out of the loss alleged in the lawsuit styled above. This Release is a release of all claims asserted by the Releasor in this lawsuit, and this lawsuit alone.

It is further understood and agreed that this settlement is the compromise of a disputed claim and that the payment is not to be construed as an admission of liability or confession of judgment on the part of the Releasees, by whom all rights and defenses under the applicable insurance policy and law are expressly reserved.

This Release is made to induce the said Releasees to enter into such settlement and pay said sum of money to the Releasor without securing additional releases, releases of lien, satisfaction of lien or other discharge of liability from third parties.

Releasor represents and warrants that she is the sole and legal owner of all right, title and interest in and to the claims, the insurance proceeds and matters which she has released herein, and that she has not heretofore assigned or transferred, or purported or attempted to assign or transfer, to any person or entity any of her rights in or to the same. The foregoing specifically includes, by way of example and not limitation, any claims for attorney's fees, client costs and/or any other litigation or related expenses heretofore incurred by Releasor related to the Releasees or any party to this release or related to the claims and matters which she has released herein and the

civil action styled above, and any claims for any costs or fees for any other services of any nature whatsoever related to the claims and matters which she has released herein.

Releasor agrees to dismiss the civil action styled above with prejudice upon receipt of the aforementioned funds by her counsel.

In entering into this Release, it is understood and agreed that Releasor relied wholly upon her own judgment, belief and knowledge as to the nature and extent of her damages and claims, and any liability therefore, and this Release is made without reliance upon any statement or representation of Releasees, or their representatives or attorneys, or by any person by them employed.

WITNESS our hands and seal this _____ day of _____, 2021.

[Signature on Next Page]

EXHIBIT “B”

IN THE CIRCUIT COURT OF THE 11TH
JUDICIAL CIRCUIT IN AND FOR
MIAMI-DADE COUNTY, FLORIDA

SALVADOR GOMEZ and YANIRA
GOMEZ,

CASE NO: 2020-012868-CA-01

Plaintiffs,

v.

FIRST PROTECTIVE INSURANCE
COMPANY D/B/A FRONTLINE
INSURANCE,

Defendant,

JOINT STIPULATION FOR FINAL ORDER OF DISMISSAL WITH PREJUDICE

Plaintiff, YANIRA GOMEZ, and Defendant, FIRST PROTECTIVE INSURANCE COMPANY D/B/A FRONTLINE INSURANCE, do hereby stipulate to the dismissal with prejudice of all of Plaintiff's, YANIRA GOMEZ, claims against Defendant, FIRST PROTECTIVE INSURANCE COMPANY D/B/A FRONTLINE INSURANCE, in this litigation.

Each party is to bear its own attorney's fees and costs.

Dated this ____ day of _____, 2021.

Margaret E. Garner, Esq. Majd Asaad, Esq. Kanner & Pinaluga, P.A. <i>Attorneys for Plaintiffs</i> 925 S. Federal Highway, Sixth Floor Boca Raton, Florida 33432 Tel.: (561) 424-0032	Maria C. Medina, Esq. Kaitlyn Dugas, Esq. Simon, Reed & Salazar, P.A. <i>Attorneys for Defendant</i> 9130 S. Dadeland Blvd., Suite 1209 Miami, Florida 33156 Tel.: (305) 670-0776
By: _____ Margaret E. Garner, Esq. Florida Bar No: 85908 Majd Asaad, Esq. Florida Bar No.: 117596	By: _____ Maria C. Medina, Esq. Florida Bar No.: 970085 Kaitlyn Dugas, Esq. Florida Bar No.: 1004136

EXHIBIT “C”

IN THE CIRCUIT COURT OF THE 11TH
JUDICIAL CIRCUIT IN AND FOR
MIAMI-DADE COUNTY, FLORIDA

SALVADOR GOMEZ and YANIRA
GOMEZ,

CASE NO: 2020-012868-CA-01

Plaintiffs,

v.

FIRST PROTECTIVE INSURANCE
COMPANY D/B/A FRONTLINE
INSURANCE,

Defendant,

FINAL ORDER OF DISMISSAL WITH PREJUDICE

THIS CAUSE having come before this Court on the Plaintiff, YANIRA GOMEZ, and Defendant's, FIRST PROTECTIVE INSURANCE COMPANY D/B/A FRONTLINE INSURANCE, Joint Stipulation for Final Order of Dismissal With Prejudice, it is hereby:

ORDERED AND ADJUDGED that the Joint Stipulation for Final Order of Dismissal with Prejudice is hereby approved, and all claims filed against Defendant, FIRST PROTECTIVE INSURANCE COMPANY D/B/A FRONTLINE INSURANCE, by Plaintiff, YANIRA GOMEZ, are hereby dismissed with prejudice, with each party to bear its own attorney's fees and costs.

DONE AND ORDERED in Chambers in Miami-Dade County, Florida this ____ day of _____, 2021.

Circuit Court Judge

Copies furnished to:
Maria C. Medina, Esq.
Beatriz Benitez, Esq.

EXHIBIT “C”

IN THE CIRCUIT COURT OF THE 11TH
JUDICIAL CIRCUIT IN AND FOR
MIAMI-DADE COUNTY, FLORIDA

SALVADOR GOMEZ and YANIRA
GOMEZ,

CASE NO: 2020-012868-CA-01

Plaintiffs,

v.

FIRST PROTECTIVE INSURANCE
COMPANY D/B/A FRONTLINE
INSURANCE,

Defendant,

DEFENDANT'S MOTION FOR AWARD OF ATTORNEYS' FEES AND COSTS

Defendant, FIRST PROTECTIVE INSURANCE COMPANY D/B/A FRONTLINE INSURANCE ("Frontline"), by and through undersigned counsel, pursuant to Rules 1.442 and 1.525, Florida Rules of Civil Procedure, hereby moves for an entry of a judgment taxing costs and awarding reasonable attorneys' fees against Plaintiffs, SALVADOR AND YANRA GOMEZ ("Plaintiffs"), and in support thereof, states as follows:

1. The trial in this matter took place from October 11, 2022 through October 14, 2022.
2. On October 14, 2022, the jury rendered a verdict in favor of Frontline. (See *Verdict*, attached hereto as **Exhibit "A"**).
3. Accordingly, Frontline is the prevailing party in this action.
4. On or about October 22, 2021, Frontline served valid and enforceable Proposals for Settlement upon Plaintiffs.

5. Therefore, Frontline is entitled to an award of its attorneys' fees and costs. Submitted herewith is the Affidavit of Maria C. Medina in support of an award of attorneys' fee and costs, attached hereto as **Exhibit "B."**

MEMORANDUM OF LAW

A. Frontline is entitled to an award of its taxable costs

Florida Statutes §57.041(1) provides, "The party recovering judgment shall recover all his or her legal costs and charges which shall be included in the judgment[.]" Under the statute, "every party who recovers a judgment in a legal proceeding is entitled as a matter of right to recover lawful court costs, and a trial judge has no discretion to deny costs to the parties recovering judgment." *Higgs v. Klock*, 873 So. 2d 591, 592 (Fla. 3d DCA 2004) (quoting *Weitzer Oak Park Estate, Ltd. v. Petto*, 573 So.2d 990, 991 (Fla. 3d DCA 1991)). On January 1, 2006, the revised Statewide Uniform Guidelines for Taxation of Costs in a Civil Action (the "Guidelines") became effective. *In Re Amendments to the Uniform Guidelines for Tax'n of Costs*, 915 So. 2d 612, 613–14 (Fla. 2005). These Guidelines set forth those litigation costs that should be taxed, may be taxed and should not be taxed. *Id.* at 614.

It is undisputed that Frontline is the prevailing party recovering judgment in this action. Therefore, Frontline is entitled to an award of taxable costs. As set forth in the Affidavit of Maria C. Medina, Frontline seeks an award of costs in the amount of \$14,420.96. All of the costs sought herein are taxable under the Guidelines and were reasonably necessary to defend against Plaintiffs' claims.

B. Frontline is Entitled to an Award of its Reasonable Attorneys' Fees

Florida law permits recovery of reasonable attorneys' fees when there is a contractual or statutory basis for recovery; otherwise, each party bears its own fees. *Price v. Tyler*, 890 So. 2d

246, 250 (Fla. 2004). Frontline is entitled to an award of its reasonable attorneys' fees pursuant to Florida Statute s. 768.79. Section 768.79(6)(a) provides in pertinent part, as follows:

Upon motion made by the offeror within 30 days after the entry of judgment . . . the court shall determine the following:

(a) If a defendant serves an offer which is not accepted by the plaintiff, and if the judgment obtained by the plaintiff is at least 25 percent less than the amount of the offer, the defendant shall be awarded reasonable costs, including investigative expenses, and attorney's fees, calculated in accordance with the guidelines promulgated by the Supreme Court, incurred from the date the offer was served, and the court shall set off such costs in attorney's fees against the award. When such costs and attorney's fees total more than the amount of the judgment, the court shall enter judgment for the defendant against the plaintiff for the amount of the costs and fees, less the amount of the award to the plaintiff.

Fla. Stat. s. 768.79(6)(a). "The spirit of the offer of judgment statute is to encourage litigants to resolve cases early to avoid incurring substantial amounts of court costs and attorney's fees."

Glanzberg v. Kauffman, 771 So. 2d 60, 61 (Fla. 4th DCA 2000) (quoting *Eagleman v. Eagleman*, 673 So.2d 946, 947 (Fla. 4th DCA 1996)).

Florida Rule of Civil Procedure 1.442 implements section 768.79. *Diamond Aircraft Indus., Inc. v. Horowitch*, 107 So. 3d 362, 376 (Fla. 2013). Rule 1.442(c) sets forth the criteria an offer must meet to be enforceable. Further, Rule 1.442 mandates that a proposal to plaintiff "shall be served no earlier than 90 days after the action has been commenced."

On or about October 22, 2021, Frontline served Proposals for Settlement on each Plaintiff in this action, offering each Plaintiff \$2,500 to settle this matter. The Proposals for Settlement are valid and enforceable as they were served more than 90 days after the action commenced (and more than 90 days after the action was served). Further, the Proposals for Settlement contained all of the terms required by Florida Rule of Civil Procedure 1.442. Because the judgment obtained by Plaintiffs is "at least 25 percent less than the amount of the offer" of settlement, Frontline is entitled to recover its reasonable attorneys' fees and costs. As set forth in the Affidavit of Maria C. Medina,

Frontline seeks an award of \$50,254.50 in attorneys' fees necessarily expended in its defense of this matter since the date the Proposals for Settlement were served.¹

CONCLUSION

Frontline, as the prevailing party in this action, is entitled to an award of its taxable costs in the amount of \$14,420.96. Further, Frontline is entitled to an award of its reasonable attorneys' fees in the amount of \$50,254.50 pursuant to the valid and enforceable Proposals for Settlement served on Plaintiffs.

WHEREFORE, Defendant, FIRST PROTECTIVE INSURANCE COMPANY D/B/A FRONTLINE INSURANCE respectfully requests that the Court (1) enter judgment in its favor and against Plaintiffs for its costs and reasonable attorneys' fees as set forth above, and (2) grant such further relief as deemed just and proper under the circumstances.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been served electronically through E-Portal on this November 14, 2022, with the Clerk of Miami-Dade County by using the Florida Courts eFiling Portal and serving via Electronic Service to: Andrew Vargas, Vargas Gonzalez Helvia Baldwin, LLP, 815 Ponce De Leon Blvd., 3rd Floor, Coral Gables, Florida 33134; service6@VargasGonzalez.com, Andrew@VargasGonzalez.com.

SIMON, REED & SALAZAR, P.A.
Attorneys for Defendant Frontline
Two Datran Center - Suite 1209
9130 S. Dadeland Blvd.
Miami, Florida 33156

¹ This figure may be added to include (i) attorneys' fees expended in the preparation of this Motion, which establishes entitlement to attorneys' fees and costs and (ii) a reasonable estimate of attorneys' fees that Frontline will incur through obtaining a ruling on this Motion. See *N. Dade Church of God, Inc. v. JM Statewide, Inc.*, 851 So. 2d 194, 196 (Fla. 3d DCA 2003) ("It is settled that in litigating over attorney' fees, a litigant may claim fees where entitlement is the issue, but may not claim attorney's fees incurred in litigating the amount of attorney's fees.").

Tel.: (305) 670-0776

Fax: (305) 670-0731

By: */s/ Melanie D. Sigel* _____

MARIA C. MEDINA

Florida Bar No. 970085

Primary e-mail: mmedina@simonreedlaw.com

Secondary e-mail: mfonticiella@simonreedlaw.com

MELANIE D. SIGEL

Florida Bar No. 123932

Primary e-mail: msigel@simonreedlaw.com

Secondary e-mail: tschwartz@simonreedlaw.com

EXHIBIT “A”

SALVADOR GOMEZ and YANIRA
GOMEZ,

CASE NO: 2020-012868-CA-01

Plaintiffs,

v.

FIRST PROTECTIVE INSURANCE
COMPANY D/B/A FRONTLINE
INSURANCE,

Defendant,

_____ /

VERDICT

We, the Jury, return the following verdict:

1. Did Salvador and Yanira Gomez prove that the damage claimed occurred during the policy period alleged?

YES NO

If your answer to Question 1 is "NO" your verdict is for Defendant on this claim, and you should not proceed further except to date and sign this verdict form and return it to the courtroom.

If your answer to Question 1 is "YES," proceed to Question 2.

2. Did the Plaintiffs prove by the greater weight of the evidence that the Defendant was prejudiced by Plaintiffs' failure to promptly report

If your answer to Question 2 is "NO" your verdict is for Defendant, and you should not proceed further except to date and sign this Verdict Form and return it to the courtroom.

If your answer to question 2 is "YES," please answer question 3.

3. Did Frontline Insurance prove the damages claimed are excluded under the terms of the policy?

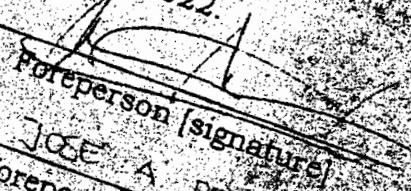
YES
NO

If your answer to Question 3 is "YES," your verdict is for Frontline Insurance on this claim, and you should not proceed further except to complete the verdict form and return it to the courtroom.

If your answer to Question 3 is "NO," proceed to Question 4.

Amount of money that is the reasonable and necessary amount of money to repair their home to its pre-loss condition?

_____ day of _____, 2022.


Foreperson [signature]

JOE A PEVE
Foreperson [print name]

EXHIBIT “B”

IN THE CIRCUIT COURT OF THE 11TH
JUDICIAL CIRCUIT IN AND FOR
MIAMI-DADE COUNTY, FLORIDA

SALVADOR GOMEZ and YANIRA
GOMEZ,

CASE NO: 2020-012868-CA-01

Plaintiffs,

v.

FIRST PROTECTIVE INSURANCE
COMPANY D/B/A FRONTLINE
INSURANCE,

Defendant,

**AFFIDAVIT OF MARIA C. MEDINA, ESQ. IN SUPPORT OF DEFENDANT'S
MOTION FOR AWARD OF ATTORNEYS' FEES AND COSTS**

STATE OF FLORIDA)

COUNTY OF MIAMI-DADE)

Before me, the undersigned authority, appeared Maria C. Medina, who, upon being duly sworn, deposes and states as follows:

1. I am an attorney duly authorized to practice law in the State of Florida and have been engaged in the practice of law since 1993.

2. I am a partner at the law firm of Simon Reed & Salazar P.A. ("SRS") in Miami, Florida. I am an attorney of record for Defendant, First Protective Insurance Company d/b/a Frontline Insurance ("Frontline") in the above-styled action.

3. Frontline engaged SRS to represent its interests in this case.

4. I have reviewed SRS's files to determine the total attorney's fees incurred in connection with SRS's representation of Frontline in this matter. The fees incurred based on the hours spent by SRS from October 22, 2021, the date of service of the Proposal For Settlement,

through October 14, 2022, the date of the verdict in Frontline's favor, total \$50,254.50. Attached hereto as composite Exhibit 1 are SRS's billing invoices from October 22, 2021 through October 14, 2022.

5. I estimate that SRS will expend additional attorneys' fees reasonably necessary to represent Frontline's interests in preparing and obtaining a ruling on the instant motion. Thus, Frontline will amend the total fee award for services rendered by SRS prior to any hearing on this issue.

6. I am familiar with the services customarily rendered by firms representing a plaintiff in an action of the nature involved herein and the fees customarily charged by or awarded to counsel in such actions. The hourly rates of SRS shareholders, partners, associates and paralegals through the time of filing this motion are comparable to or less than those charged in this community by individuals of comparable skill and experience. The services provided by SRS were reasonably necessary to properly represent Frontline's interests in this case.

7. In my experience, considering the prevailing market rate in Miami-Dade County for similar services by lawyers and paralegals of reasonably comparable skill and experience, the hourly rates set forth in composite Exhibit 1 are within the range of hourly rates charged for the time of comparable attorneys and paralegals in Miami-Dade County. Accordingly, it is my opinion that the hourly rates charged by SRS in this case are reasonable.

8. In my opinion, the billing invoices attached hereto as composite Exhibit 1 contains no excessive, redundant or otherwise unnecessary hours and, thus, the hours billed were reasonably expended.


9. The total amount of attorneys' fees expended by SRS is broken down as follows:

- a. 293.9 hours reasonably expended at hourly rates ranging from \$100.00 to \$185.00 reasonably charged, as more fully set forth in the attached Exhibit 1, for a total of \$50,254.50.
- b. A reasonable estimate that, between October 14, 2022 and obtaining a ruling on this matter, Frontline will incur additional attorneys' fees, which are reasonably necessary to represent Frontline's interests in this matter.

10. Thus, the total current fee request of \$50,254.50 is based upon reasonable hourly rates and a reasonable number of hours expended by SRS.

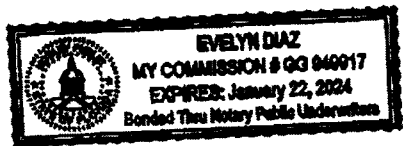
11. In addition, Frontline, while represented by SRS, incurred \$14,420.96¹ in costs that were reasonably necessary to defend itself and specifically taxable under Florida Law.

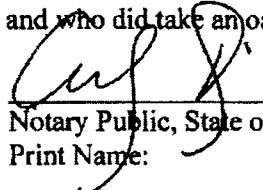
12. These costs were for the services of court reporters, deposition transcripts and expert witness fees, etc. Attached hereto in composite Exhibit 1 are the receipts for the taxable costs expended and a chart reflecting same.

~~FURTHER AFFIANT SAYETH NAUGHT~~


 Maria C. Medina

The foregoing instrument was acknowledged before me this 14th day of November, 2022 by Maria C. Medina who is personally known to me/presented _____ as identification and who did take an oath.





 Notary Public, State of Florida
 Print Name:
 My commission expires:

¹ Final costs for trial and final resolution of fees and costs remain to be determined and will be supplemented prior to any hearing on this issue.

EXHIBIT “D”

IN THE CIRCUIT COURT OF THE 11TH JUDICIAL CIRCUIT
IN AND FOR MIAMI-DADE COUNTY, FLORIDA
CASE NO.: 2020-012868-CA-01

SALVADOR GOMEZ and YANIRA
GOMEZ,

Plaintiffs,

vs.

FIRST PROTECTIVE INSURANCE
COMPANY D/B/A FRONTLINE
INSURANCE,

Defendant.

-----/

The above-styled cause came on for Remote
Zoom Hearing before THE HONORABLE BARBARA ARECES,
Circuit Court Judge, on the 15th day of February, 2023,
and commencing at 9:00 o'clock a.m.

Taken by:
Lucie Masi,
Certified Shorthand Reporter

1 APPEARANCES:

2

3

ON BEHALF OF THE PLAINTIFFS:

4

VARGAS GONZALEZ BALDWIN DELOMBARD, LLP

BY: MATTHEW BALDWIN, ESQUIRE

5

815 Ponce de Leon Blvd., 3rd Floor

Coral Gables, Florida 33134

6

7

ON BEHALF OF THE DEFENDANT:

8

SIMON, REED & SALAZAR, P.A.

BY: MARIA C. MEDINA, ESQUIRE

9

9130 S. Dadeland Blvd.

Miami, Florida 33156

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1 (Whereupon, the following proceedings were
2 had:)

3 THE COURT: Good morning. We're here on
4 Salvador and Yanira Gomez versus First Protective.

5 MR. BALDWIN: Good morning, Your Honor,
6 Matthew Baldwin on behalf of the Plaintiffs.

7 THE COURT: I'm sorry, who was it, Matthew
8 Baldwin?

9 MR. BALDWIN: Yes, ma'am, Matthew Baldwin on
10 behalf of the Plaintiff. It's good to see you,
11 Judge.

12 THE COURT: And likewise good to see you, and
13 good to see you.

14 For the Defense?

15 MS. MEDINA: Good morning, Your Honor, Maria
16 Medina on behalf of the Defendant.

17 THE COURT REPORTER: And the court reporter
18 is present as well, Your Honor.

19 THE COURT: All right.

20 So as it pertains to the -- we'll start with
21 the Proposal for Settlement.

22 I reviewed the Motion and the Response, so I
23 guess I'll start with a Reply from the Defense.

24 MS. MEDINA: Yes, Your Honor.

25 Respectfully to the information that's

1 provided in the Response, it's actually a
2 misapplication of Florida law.

3 As you know, the amendment to 1.442 was made
4 effective July 1st, 2022.

5 When you read the actual amendment which, by
6 the way, is included in the supplemental materials
7 that we filed yesterday in reply to the
8 Response --

9 THE COURT: Right.

10 MS. MEDINA: -- there is a reference in the
11 amendment to this Diecidue case, which the
12 Plaintiff is relying on for the proposition that
13 the law was -- that the information that's
14 contained in that Diecidue case was in effect as
15 of 2017; that's actually inaccurate.

16 The Diecidue case did not rule on 1.442 and
17 whether or not attaching a Release to a Proposal
18 for Settlement made it invalid.

19 In fact, at the time in 2017, all the way up
20 until the amendment in July of 2022, the rule
21 actually required that the offerer -- and this is
22 quoting -- "state with particularity any relevant
23 conditions of the proposal, and to state with
24 particularity any nonmonetary terms of the
25 proposal".

1 So it actually required that nonmonetary
2 terms be described with particularity.

3 There is case after case in all of the
4 Districts of Florida that support the proposition
5 that a General Release, as long as it states with
6 particularity all nonmonetary terms, is valid and
7 enforceable.

8 Included in the materials, I included the
9 latest case that I could find just before the
10 amendment took place, which is the Tower Hill
11 Signature Insurance Company versus Kushch, and
12 that's K-U-S-H-C-H, and this is the Fourth
13 District and it's a case from February of 2022, so
14 just a couple of months prior to the amendment
15 taking place.

16 And in that case, the Proposal and Release
17 were found to be specifically limited to resolving
18 the claims asserted in that case, and therefore
19 upheld.

20 So our position is that because our Proposal
21 for Settlement was served in October of '21, prior
22 to the amendment taking place, we did it the way
23 that it was supposed to be done in '21, which the
24 Proposal for Settlement with the attached General
25 Release that provided all nonmonetary terms with

1 particularity as required at the time.

2 And therefore, because the amendment is not
3 retroactive, and that's clear in the amendment
4 itself, it didn't take effect until after July of
5 '22, our Proposal for Settlement is valid and
6 enforceable, and therefore we are entitled to fees
7 pursuant to the verdict that was rendered in the
8 case.

9 THE COURT: Did the Proposal for Settlement
10 provide for a specific time frame for the payment
11 of the monetary amount?

12 MS. MEDINA: No, I don't believe so. What
13 do you mean, like the -- for the Plaintiff --

14 THE COURT: The money would be paid within 30
15 days of the --

16 MR. BALDWIN: I don't believe so, Judge.

17 MS. MEDINA: I don't believe so, Judge, but I
18 can check.

19 MR. BALDWIN: Just in surreply, Judge, that's
20 a little bit of a misreading of what the Florida
21 Supreme Court said in the amendment.

22 When the amendment is officially effective,
23 it doesn't change what the law is.

24 If you look at all the line of cases, what
25 the Florida Supreme Court is doing is saying

1 "We're going to amend the rule because the rule
2 is an unauthorized extension of what the Florida
3 Legislature allowed in 768.79".

4 The statute is where the power comes from.
5 The statute says "monetary terms", end of story.

6 The Rule of Procedure expanded upon that, not
7 with any authorization under law, and that is why
8 they conformed the law to eliminate the errors
9 that other Courts have made by inappropriately
10 extending the breath of the Florida Statute
11 768.79.

12 Judge Manno-Schurr just ruled on this last
13 month.

14 THE COURT: Yes, I saw her Order. I'm aware
15 of the case that specifically addresses the issue
16 of the time frame for the payment.

17 It has to be specific, that the payment will
18 be paid -- even if the Release was attached and
19 the Release wasn't even an issue there, it has to
20 be a specific time frame for the payment.

21 Once accepted within ten days, it has to be
22 specific --

23 MS. MEDINA: Well, Your Honor, before you
24 rule, that's not even the issue that has been
25 brought forward by the Plaintiff.

1 They're arguing that it's simply the fact
2 that a General Release was attached makes the
3 Proposal invalid.

4 If I could just be given a moment to look
5 through our Release and make sure, because I'm not
6 sure about that.

7 I wasn't prepared for that argument because
8 that's not argument that's raised by the Plaintiff
9 here.

10 MR. BALDWIN: Well, with all due respect,
11 Judge, if there's any legal basis for its
12 invalidity, of course the Court can't enter an
13 Order knowing that it's illegal.

14 MS. MEDINA: No. I would just request that
15 the Court postpone ruling on that issue so that I
16 may appropriately respond.

17 THE COURT: Okay. I'm sorry, I need to go.
18 Send it to me and I'll go through it.

19 MS. MEDINA: I am. I'm sorry, Your Honor. I
20 am trying to find it.

21 THE COURT: So I'll deny it as to fees.

22 If there's a reason for reconsideration, just
23 go ahead and file something.

24 And granted as to costs, regarding the
25 amount. The Final Judgment can be entered, this

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a.m 1:16 9:5 ability 10:8 above-styled 1:15 10:7 accepted 7:21 accurate 10:8 action 10:11 actual 4:5 addresses 7:15 ahead 8:23 allowed 7:3 amend 7:1 amendment 4:3,5,11,20 5:10,14 5:22 6:2,3,21,22 amount 6:11 8:25 APPEARANCES 2:1 appropriately 8:16 ARECES 1:15 arguing 8:1 argument 8:7,8 asserted 5:18 attached 5:24 7:18 8:2 attaching 4:17 attorney	B	D	E	
	Baldwin 2:4,4 3:5,6,8,9,9 6:16 6:19 8:10 9:3 BARBARA 1:15 basis 8:11 behalf 2:3,7 3:6,10,16 believe 6:12,16,17 best 10:8 bit 6:20 Bld 2:5,9 breath 7:10 brought 7:25 Broward 10:4,6	C		
	C 2:8 10:2,2 case 1:3 4:11,14,16 5:3,3 5:9,13,16,18 6:8 7:15 cases 6:24 cause 1:15 Certified 1:23 10:5,16 certify 10:6,9	change 6:23 check 6:18 Circuit 1:1,1,16 claims 5:18 clear 6:3 comes 7:4 commencing 1:16 Company 1:8 5:11 concluded 9:5 conditions 4:23 conformed 7:8 contained 4:14 Coral 2:5 costs 8:24 9:1 counsel 10:10,10 County 1:2 10:4,6 couple 5:14 course 8:12 court 1:1,16 3:3,7,12,17,17 3:19 4:9 6:9,14,21 6:25 7:14 8:12,15 8:17,21 Courts 7:9	1:8 Dadeland 2:9 day 1:16 10:13 days 6:15 7:21 de 2:5 Defendant 1:9 2:7 3:16 Defense 3:14,23 DELOMBARD 2:4 deny 8:21 described 5:2 Diecidue 4:11,14,16 directly 10:11 District 5:13 Districts 5:4 doing 6:25 due 8:10	E 10:2,2 effect 4:14 6:4 effective 4:4 6:22 eliminate 7:8 employee 10:10,10 enforceable 5:7 6:6 enter
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8:12 entered 8:25 entitled 6:6 errors 7:8 ESQUIRE 2:4,8 expanded 7:6 extending 7:10 extension 7:2	found 5:17 Fourth 5:12 frame 6:10 7:16,20 FRONTLINE 1:8 FURTHER 10:9	1:15	knowledge 10:8 Kushch 5:11
<hr/> F <hr/> F 10:2 fact 4:19 8:1 February 1:16 5:13 10:13 fees 6:6 8:21 file 8:23 filed 4:7 Final 8:25 financially 10:11 find 5:9 8:20 First 1:7 3:4 Floor 2:5 Florida 1:2 2:5,9 4:2 5:4 6:20 6:25 7:2,10 10:3,6 following 3:1 forward 7:25	<hr/> G <hr/> Gables 2:5 General 5:5,24 8:2 given 8:4 go 8:17,18,23 going 7:1 Gomez 1:4,4 3:4 GONZALEZ 2:4 good 3:3,5,10,12,13,15 granted 8:24 guess 3:23	<hr/> I <hr/> illegal 8:13 inaccurate 4:15 inappropriately 7:9 included 4:6 5:8,8 inclusive 10:7 indirectly 10:11 information 3:25 4:13 Insurance 1:7,8 5:11 interested 10:11 invalid 4:18 8:3 invalidity 8:12 issue 7:15,19,24 8:15	<hr/> L <hr/> latest 5:9 law 4:2,13 6:23 7:7,8 legal 8:11 Legislature 7:3 Leon 2:5 likewise 3:12 limited 5:17 line 6:24 little 6:20 LLP 2:4 long 5:5 look 6:24 8:4 Lucie 1:23 10:5,16
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mean 6:13	Okay 8:17 9:2	3:1	4:22
Medina 2:8 3:15,16,24 4:10 6:12,17 7:23 8:14 8:19 9:2	Once 7:21	proposal 3:21 4:17,23,25 5:16 5:20,24 6:5,9 8:3	relying 4:12
Miami 2:9	Order 7:14 8:13	proposition 4:12 5:4	Remote 1:15
MIAMI-DADE 1:2	P	Protective 1:7 3:4	rendered 6:7
misapplication 4:2	P.A. 2:8	provide 6:10	reply 3:23 4:7
misreading 6:20	Pages 10:7	provided 4:1 5:25	reporter 1:23 3:17,17 10:5,16
moment 8:4	paid 6:14 7:18	public 10:6,17	request 8:14
monetary 6:11 7:5	particularity 4:22,24 5:2,6 6:1	pursuant 6:7	required 4:21 5:1 6:1
money 6:14	parties 10:10	Q	resolving 5:17
month 7:13	payment 6:10 7:16,17,20	quoting 4:22	respect 8:10
months 5:14	pertains 3:20	R	Respectfully 3:25
morning 3:3,5,15	place 5:10,15,22	R 10:2	respond 8:16
Motion 3:22	Plaintiff 3:10 4:12 6:13 7:25 8:8	raised 8:8	Response 3:22 4:1,8
N	Plaintiffs 1:5 2:3 3:6	read 4:5	retroactive 6:3
need 8:17	Ponce 2:5	reason 8:22	reviewed 3:22
nonmonetary 4:24 5:1,6,25	position 5:20	reconsideration 8:22	right 3:19 4:9
notary 10:6,17	postpone 8:15	recorded 10:7	rule 4:16,20 7:1,1,6,24
O	power 7:4	REED 2:8	ruled 7:12
o'clock 1:16	prepared 8:7	reference 4:10	ruling 8:15
October 5:21	present 3:18	regarding 8:24	S
offerer 4:21	prior 5:14,21	relative 10:9,10	S 2:9
officially 6:22	Procedure 7:6	Release 4:17 5:5,16,25 7:18 7:19 8:2,5	SALAZAR 2:8
	proceedings	relevant	Salvador 1:4 3:4
			saw

7:14	support	verdict	2
saying	5:4	6:7	2017
6:25	supposed	versus	4:15,19
says	5:23	3:4 5:11	2020-012868-CA-01
7:5	Supreme	vs	1:3
seal	6:21,25	1:6	2022
10:13	sure	W	4:4,20 5:13
see	8:5,6	wasn't	2023
3:10,12,13	surreply	7:19 8:7	1:16 10:13
Send	6:19	way	21
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5:21	10:2,2	3:20	10:13
set	take	We're	22
10:12	6:4	3:3 7:1	6:5
Settlement	Taken	WHEREOF	3
3:21 4:18 5:21,24 6:5	1:22	10:12	30
6:9	ten	WITNESS	6:14
Shorthand	7:21	10:12	33134
1:23 10:5,16	terms	X	2:5
Signature	4:24 5:2,6,25 7:5	Y	33156
5:11	Thank	Yanira	2:9
SIMON	9:2,3	1:4 3:4	3rd
2:8	time	yesterday	2:5
simply	4:19 6:1,10 7:16,20	4:7	4
8:1	Tower	Z	5
sorry	5:10	Zoom	6
3:7 8:17,19	transcription	1:15	7
specific	10:8	0	768.79
6:10 7:17,20,22	true	1	7:3,11
specifically	10:7	1	8
5:17 7:15	trying	1	815
start	8:20	1	2:5
3:20,23	U	1	9
state	unauthorized	10:7	9:00
4:22,23 10:3,6	7:2	1.442	1:16
states	upheld	4:3,16	9:30
5:5	5:19	11TH	
statute	V	1:1	
7:4,5,10	valid	15th	
stenographically	5:6 6:5	1:16	
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story	2:4	4:4	
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EXHIBIT “E”

**IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL
CIRCUIT IN AND FOR MIAMI-DADE COUNTY, FLORIDA**

CASE NO: 2020-012868-CA-01

SECTION: CA23

JUDGE: Barbara Areces

Salvador Gomez et al

Plaintiff(s)

vs.

First Protective Insurance Company

Defendant(s)

**ORDER ON DEFENDANT'S MOTION FOR ENTITLEMENT TO ATTORNEYS' FEES
AND COSTS**

THIS Cause having come before the Court on February 15th, 2023 via Zoon Conference, on Defendant's Motion for Award of Attorney's Fees and Costs, and the Court having heard the arguments of counsel, and being otherwise advised in the premises, it is hereby:

ORDERED AND ADJUDGED that:

1. Defendant's Motion for Entitlement to Attorney's Fees and Costs is GRANTED in part, as it pertains to its request for costs, and DENIED in part, as it pertains to its request for attorney's fees.
2. This is a breach of contract action stemming from a first-party property homeowner's insurance claim dispute. On October 14, 2022, a jury returned a verdict in favor of the Defendant.
3. On or about October 22, 2021, prior to the jury verdict, the Defendant had served its Proposal for Settlements upon Plaintiffs ("the Proposals") pursuant to Section 768.79, Florida Statutes and Florida Rule of Civil Procedure 1.442, which was never accepted and deemed rejected. See Fla. R. Civ. P. 1.442(f)(1); Fla. Stat. §768.79(1) & (4).
4. Ordinarily, under these circumstances, the Plaintiffs' failure to accept the Proposals and the jury verdict in the Defendant's favor would entitle the Defendant to recover its fees and costs as of the date of the service of the Proposal from Plaintiffs. However, in this case, the Court finds the proposals served were ambiguous and therefore invalid in that the proposal and attached general release failed to include the date or timeframe for payment on the proposals, if accepted by Plaintiffs. see *Harris v Tiner*, 336 So.3d 1238 (Fla. 2d DCA 2022)
5. Defendant is entitled to its taxable costs. The Court will enter judgment in favor of

Defendant, reserving on the amount of costs.

DONE and ORDERED in Chambers at Miami-Dade County, Florida on this 22nd day of February, 2023.

~~2020-012868-CA-01 02-22-2023 8:59 AM~~

2020-012868-CA-01 02-22-2023 8:59 AM

Hon. Barbara Areces

CIRCUIT COURT JUDGE

Electronically Signed

No Further Judicial Action Required on **THIS MOTION**

CLERK TO **RECLOSE** CASE IF POST JUDGMENT

Electronically Served:

Andrew J Vargas, epleadings@vargasgonzalez.com
Andrew J. Vargas, Esq., Service6@VargasGonzalez.com
Andrew J. Vargas, Esq., Andrew@VargasGonzalez.com
Andrew J. Vargas, Esq., Epleadings@VargasGonzalez.com
James B Chaplin Esq, service@floridamediation.com
Katherine Nicole Buckalew, KBuckalew@VargasGonzalez.com
Katherine Nicole Buckalew, Service10@VargasGonzalez.com
Maria C Medina, mmedina@simonreedlaw.com
Maria C Medina, mfonticiella@simonreedlaw.com
Matthew Lee Baldwin, Service8@VargasGonzalez.com
Matthew Lee Baldwin, Matthew@VargasGonzalez.com
Matthew Lee Baldwin, Bmusillo@VargasGonzalez.com
Melanie D. Sigel, MSigel@simonreedlaw.com
Melanie D. Sigel, tschwartz@simonreedlaw.com
Paige B. Segrera, psegrera@simonreedlaw.com
Paige B. Segrera, kmiller@simonreedlaw.com
Rene M. Delombard, Service1@vargasgonzalez.com
Rene M. Delombard, RDelombard@vargasgonzalez.com
Rene M. Delombard, Epleadings@vargasgonzalez.com

Physically Served:

EXHIBIT “F”

**IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL
CIRCUIT IN AND FOR MIAMI-DADE COUNTY, FLORIDA**

CASE NO: 2020-012868-CA-01

SECTION: CA23

JUDGE: Barbara Areces

Salvador Gomez et al

Plaintiff(s)

vs.

First Protective Insurance Company

Defendant(s)

FINAL JUDGMENT

THIS Cause having been heard by a jury on October 11, 2022 through October 14, 2022, and the Jury having returned a verdict in favor of Defendant, First Protective Insurance Company, d/b/a Frontline Insurance, and pursuant to the verdict rendered in this action, it is

ORDERED AND ADJUDGED that Plaintiffs, SALVADOR GOMEZ and YANIRA GOMEZ, whose address is 15912 SW 100th Lane, Miami, Florida 33196, take nothing by this action and that Defendant, FIRST PROTECTIVE INSURANCE COMPANY D/B/A FRONTLINE INSURANCE, shall go hence without day and recover costs from plaintiff in an amount to be determined by the Court. The Court reserves jurisdiction to determine the amount of costs.

DONE and ORDERED in Chambers at Miami-Dade County, Florida on this 22nd day of February, 2023.

~~2020-012868-CA-01 02-22-2023 9:00 AM~~

2020-012868-CA-01 02-22-2023 9:00 AM

Hon. Barbara Areces

CIRCUIT COURT JUDGE

Electronically Signed

Final Order as to All Parties SRS #: 2 (Jury Trial)

THE COURT DISMISSES THIS CASE AGAINST ANY PARTY NOT LISTED IN THIS FINAL ORDER OR PREVIOUS ORDER(S). THIS CASE IS CLOSED AS TO ALL PARTIES.

Electronically Served:

Andrew J Vargas, epleadings@vargasgonzalez.com
Andrew J. Vargas, Esq., Service6@VargasGonzalez.com
Andrew J. Vargas, Esq., Andrew@VargasGonzalez.com
Andrew J. Vargas, Esq., Epleadings@VargasGonzalez.com
James B Chaplin Esq, service@floridamediation.com
Katherine Nicole Buckalew, KBuckalew@VargasGonzalez.com
Katherine Nicole Buckalew, Service10@VargasGonzalez.com
Maria C Medina, mmedina@simonreedlaw.com
Maria C Medina, mfonticiella@simonreedlaw.com
Matthew Lee Baldwin, Service8@VargasGonzalez.com
Matthew Lee Baldwin, Matthew@VargasGonzalez.com
Matthew Lee Baldwin, Bmusillo@VargasGonzalez.com
Melanie D. Sigel, MSigel@simonreedlaw.com
Melanie D. Sigel, tschwartz@simonreedlaw.com
Paige B. Segrera, psegrera@simonreedlaw.com
Paige B. Segrera, kmiller@simonreedlaw.com
Rene M. Delombard, Service1@vargasgonzalez.com
Rene M. Delombard, RDelombard@vargasgonzalez.com
Rene M. Delombard, Epleadings@vargasgonzalez.com

Physically Served: