

**IN THE DISTRICT COURT OF APPEAL OF FLORIDA,  
FOURTH DISTRICT**

GEICO GENERAL INSURANCE	)	CASE NO.: 4D2024-2935
COMPANY,	)	L.T. No. CACE-23-004295
	)	
Appellant,	)	
-v-	)	
	)	
STEVEN ROBERT PETROSKY,	)	
	)	
Appellee.	)	

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**INITIAL BRIEF OF APPELLANT**

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## **PREFACE**

The parties and record will be referred to as follows in this Initial Brief:

Appellant GEICO General Insurance Company will be referred to as “GEICO” or the “Appellant.”

Appellee Steven Robert Petrosky will be referred to as “Appellee”.

The auto insurance policy entered into between GEICO and Appellee will be referred to as the “Policy.”

The Uninsured Motorist Coverage (UM) Selection/Rejection Form will be referred to as the “M9 Form.”

The “trial court” or “lower court” refers to the Circuit Court of the Seventeenth Judicial Circuit in and for Broward County, Florida.

The letter “A” refers to the Appendix on Appeal followed by the page number(s). For example, “A: 1-3” refers to pages 1 through 3 of the Appendix.

## **STATEMENT OF THE CASE AND FACTS**

This action arose from a motor vehicle accident that occurred in Pinellas County, Florida on June 14, 2022 in which Appellee was allegedly injured by a negligent underinsured/uninsured motorist. (A: 13, 17). Appellee filed a Complaint in this case on March 18, 2023 (A: 8-25) asserting the following causes of action:

Count I –Declaratory Relief Against GEICO

Count II – UI/UIM Claim Against GEICO

Count III – Fraud in the Inducement Against GEICO

Count IV – Bad Faith Claim Against GEICO

Count V – Fraud Claim Against Defendant Cassie Lewis

(A: 13-25).<sup>1</sup>

GEICO filed a Motion to Dismiss Plaintiff’s Complaint on August 3, 2023, arguing that Appellee’s claim for Declaratory Relief should

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<sup>1</sup> On August 14, 2023, the trial court entered a *Sua Sponte* Order Granting Extension of Time to Serve and Notice of Impending Dismissal as a result of Appellee’s failure to serve Defendant Cassie Lewis with the Complaint. (A: 35-36). The Order granted Appellee until September 18, 2023 to serve the Complaint on Ms. Lewis. (A: 35). On September 19, 2023, after Appellee failed to timely serve Ms. Lewis, the trial court entered an Order of Dismissal for Lack of Service After Notice, dismissing Ms. Lewis from the case without prejudice. (A: 37-38).

be dismissed as duplicative of Appellee's claim for UM benefits, and that Appellee's claim for Bad Faith should be dismissed as premature since Appellee failed to demonstrate or allege a determination as to coverage, liability and damages, which is condition precedent to bring a bad faith claim. (A: 27-33). The trial court entered an Order on GEICO's Motion to Dismiss Plaintiff's Complaint, in which it denied the Motion as to Count I for Declaratory Relief, and abated the Bad Faith Claim contained in Count IV of the Complaint. (A: 39-40). GEICO filed its Answer and Affirmative Defenses to Plaintiff's Complaint on November 27, 2023. (A: 41-51).

On February 15, 2024, GEICO served its First Request for Production to Plaintiff, as well as its Interrogatories to Plaintiff. (A: 59-66). On March 1, 2024, GEICO served its First Set of Requests for Admission to Plaintiff. (A: 67-69). While Appellee responded to the First Set of Requests for Admission to Plaintiff on April 1, 2024 (A: 70-72), Appellee failed to timely respond to GEICO's First Request for Production to Plaintiff and Interrogatories to Plaintiff. (A: 73-75). Therefore, on May 9, 2024, GEICO filed a Motion to Compel Discovery Responses. (A: 73-75).

After Appellee filed Plaintiff's Witness and Exhibit List (A:95-

108), and while GEICO was still awaiting responses to its Interrogatories and Requests for Production, GEICO filed its Amended Renewed Motion to Transfer Venue for *Forum Non Conveniens* on October 10, 2024 (“Motion to Transfer”). (A: 198-278). In its Motion to Transfer, GEICO established the following facts through Appellee’s Responses to GEICO’s Requests for Admission,<sup>2</sup> Plaintiff’s Fact Witness List, and sworn declarations:

- The subject accident occurred in Pinellas County, Florida. (A: 200-204).
- Lakenya Makayla Mosley, the owner and operator of the vehicle involved in the accident with Appellee, resides in St. Petersburg (Pinellas County), and is expected to testify as to liability, causation and damages. (A: 200, 212).
- Rosetta Brown, a witness to the subject accident, resides in St. Petersburg (Pinellas County), and is expected to testify as to liability, causation and damages. (A: 200, 212).
- The Claims and/or Corporate Representative for Pinellas County, which owns the vehicle that was involved in the subject accident with Appellee, is located in Pinellas County, and is expected to testify as to liability, causation and damages. (A: 200, 212).

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<sup>2</sup> While GEICO had served its Interrogatories and Requests for Production on February 15, 2024 (A: 59-66), Appellee had not responded to those requests at the time that GEICO filed its Motion to Transfer. (A: 1128-1143). Appellee did not respond to GEICO’s discovery requests until November 14, 2024. (A: 1128-1143).

- St. Petersburg Police Department Officer Lopez-Carrasquillo, who responded to the subject accident, is expected to testify as to liability, causation and damages. (A: 200, 212).
- The medical providers that have treated Appellee for the alleged injuries suffered in the subject accident are located in Pinellas County, as are the relevant medical records. (A: 200, 213-214).
- Appellee procured the subject Policy, and the Policy was issued to Appellee, in Pinellas County, and all Policy renewals and Endorsements were issued to Appellee in Pinellas County. (A: 224, 228-268).
- Cassie Lewis, the GEICO Claims Manager who Appellee claims fraudulently issued the sworn insurance disclosure confirming that Appellee had rejected UM coverage is located in Lakeland (Polk County), Florida. (A: 225). Ms. Lewis is a former party and a key witness who will rebut Appellee's allegations that the M9 Form was void, or that she fraudulently or intentionally provided a sworn affidavit as it related to UM coverage for the purpose of misrepresenting the amount of coverage available. (A: 225).
- Christopher Smith is a key witness and Corporate Representative for GEICO and lives and works in Lakeland (Polk County). (A: 225, 272). Mr. Smith's live testimony will be critical should this matter proceed to trial. (A: 272). He is expected to testify regarding, among other things, the facts surrounding completion of the Uninsured Motorist Coverage (UM) Selection/Rejection Form (M9 Form) and the circumstances in which the completion of such M9 Form is required by GEICO, as well as GEICO's adherence to Fla. Stat. § 627.727 as it relates to the provision of annual notice regarding UM coverage and the steps taken by GEICO to fulfill this requirement. (A: 271-272). His testimony is indispensable to the Company's defense that

GEICO is entitled to a conclusive presumption that Appellee made a knowing, written rejection of UM coverage, and GEICO's provision of its annual notice, including its attachment to the notice of premium, and the fact that the annual notice was approved by the OIR. (A: 272). As set forth in his Declaration, Mr. Smith would be substantially inconvenienced if required to attend court proceedings in Broward County. (A: 272-273).

While GEICO does have offices in Broward County, neither Appellee nor his counsel ever had any contact whatsoever with any employee, agent or representative from any of the Broward County offices in connection with the claims at issue in this case. (A: 224-225). Further, none of the files relating to procurement of the Policy, completion of the M9 Form, renewal of the Policy or claims under the Policy are maintained in Broward County. (A: 225). There are no employees, agents or representatives from any of the Broward County offices that have knowledge regarding any facts pertaining to the Policy, UM coverage, execution of the M9 For, renewal of or changes to the Policy, the provision of annual notice or claims under the Policy. (A: 225). None of GEICO's witnesses for this case are located in Broward County. (A: 225). In fact, GEICO's closest witnesses reside and work in Polk County, which is an hour and 15 minute

drive to Pinellas County, as opposed to a 3 ½ hour drive to Broward County. (A: 225).

As important, the Judicial Circuit in and for Broward County has the second highest volume of circuit civil filings in the State of Florida, with 24,400 circuit civil filings in fiscal year 2022-2023, compared to only 9,966 circuit civil filings in Pinellas County.<sup>3</sup> (A: 201). Accordingly, GEICO showed in its Motion to Transfer that the interests of justice further favored transferring venue to Pinellas County, where Appellee resides, the Policy was procured and issued, the M9 Form rejecting UM coverage was signed, the subject accident occurred and the witnesses to the accident are located, and is in close proximity to where GEICO's key witnesses reside. (A: 198-202).

Appellee did not file a response in opposition to GEICO's Motion to Transfer, or otherwise provide any sworn evidence, such as affidavits, discovery responses or deposition transcripts to dispute GEICO's *forum non conveniens* challenge. (A: 1106). Rather, at the hearing on the Motion to Transfer held on October 30, 2024, Appellee's counsel only generally argued that the Motion to Transfer

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<sup>3</sup> <https://www.flcourts.gov/content/download/1334569/file/2022-23-srg-chapter-4-circuit-civil-20231219.pdf>

should be denied because (1) GEICO did not provide affidavits from fact witnesses; and (2) the inconvenience to Mr. Smith, GEICO's corporate representative, was irrelevant since he is not a fact witness. (A: 1106-1107, 1109-1110).

After hearing argument of the parties, the trial court denied the Motion, simply stating: "Okay. I will continue to deny the motion since there's no fact witness affidavit other than the corporate rep..." (A: 1111). On November 11, 2024, the trial court issued an Order denying GEICO's Motion to Transfer and reiterating the same holding. (A: 1097-1098). GEICO filed a Notice of Appeal on November 12, 2024 (A: 1118-1119), and filed a Motion to Stay Proceedings Pending Interlocutory Appeal ("Motion to Stay") on the same date. (A: 1123-1127).

## **SUMMARY OF THE ARGUMENT**

The trial court abused its discretion by denying the Motion to Transfer. Appellee resides in Pinellas County, he procured the policy and executed the M9 form rejecting UM coverage in Pinellas County, and the Policy was issued to him in Pinellas County. The subject accident occurred in Pinellas County, and the owner and operator of the vehicle involved in the accident, as well as witnesses to the accident, are located in Pinellas County. The St. Petersburg Police Department Officer who responded to the accident is also located in Pinellas County. Appellee was treated for his alleged injuries in Pinellas County. Further, two of GEICO's key witnesses are located in Polk County, which is more convenient to Pinellas County than to Broward County, and these witnesses will be indispensable to GEICO's defense that it is entitled to a conclusive presumption that Appellee made a knowing, written rejection of UM coverage as a result of execution and submission of the M9 Form, the annual notice complied with the statutory requirements, as well as to defeat Appellee's argument that there was any fraud or deceit associated with Appellee's execution of the M9 Form.

Conversely, *none* of the underlying events giving rise to Appellee's claims, nor the parties or key witnesses, have any connection to Broward County. While GEICO conducts business in Broward County (and all counties throughout Florida), GEICO's Broward County offices had no involvement whatsoever in the purchase or issuance of the policy to Appellee, or changes to and renewals of his policy. Neither Appellee, nor his counsel, had any contact whatsoever with any of GEICO's Broward County offices in connection with their claims, and none of the files relating to procurement of the Policy, renewal of the Policy or claims under the Policy are maintained in Broward County. Indeed, there are no employees, agents or representatives from any of the Broward County offices that would have knowledge regarding any facts pertaining to the Policy, coverages under the Policy, Policy renewals, or claims under the Policy.

Given the remote connection that this case has to Broward County, the interests of justice further mandate transfer of this action to Pinellas County. Broward County is more populous, its dockets are more crowded, and its judicial resources are scarce.

Broward County's courts and community should not be burdened with a lawsuit to which that county has absolutely no connection.

Moreover, the sole basis articulated by the trial court for denying GEICO's Motion to Transfer was that GEICO had not provided affidavits of fact witnesses, but only the affidavit of GEICO's corporate representative, Christopher Smith. The trial court abused its discretion in refusing to acknowledge the substantial inconvenience that Mr. Smith would suffer if the trial were to proceed in Broward County. GEICO also provided sworn evidence demonstrating that Cassie Lewis, a former Defendant in this matter, and the Claims Manager who Appellee claims fraudulent issued the sworn insurance disclosure confirming that Appellee had rejected UM coverage is located in Polk County. Ms. Lewis was formerly a party and is a key witness in this case, and the trial court's refusal to acknowledge the inconvenience she would suffer by having to travel to Broward County for trial likewise constituted an abuse of discretion.

Accordingly, given the extensive connection that this case has to Pinellas County and the complete absence of any connection to Broward County, this Court should reverse the Order denying

GEICO's Motion to Transfer, and remand with instructions for the trial court to transfer this case to the Sixth Judicial Circuit in and for Pinellas County.

### **STANDARD OF REVIEW**

An abuse of discretion standard applies to the review of orders denying motions to transfer venue. *Botta v. Ciklin, Lubitz & O'Connell*, 222 So. 3d 605, 609 (Fla. 4th DCA 2017). "Nevertheless, in any matter involving discretion of the trial court, the court does not have the right to disregard the established principles and guidelines set forth by law for decision in such matter." *Peterson, Howell & Heather v. O'Neill*, 314 So. 2d 808, 810 (Fla. 3d DCA 1975) (holding refusal to transfer action pursuant to section 47.122, Florida Statutes, was an abuse of discretion); *See also Universal Prop. & Cas. Ins. Co. v. Long*, 157 So. 3d 382, 383 (Fla. 2d DCA 2015)(finding that, while the standard of review is abuse of discretion, "[a] circuit court may not ignore the three pertinent factors when deciding whether a venue transfer under section 47.122 is proper").

### **ARGUMENT**

#### **I. THE TRIAL COURT ABUSED ITS DISCRETION IN DENYING GEICO'S SECOND RENEWED MOTION TO TRANSFER.**

Section 47.051, Florida Statutes, provides that “[a]ctions against foreign corporations doing business in this state shall be brought in a county where such corporation has an agent or other representative, where the cause of action accrued, or where the property in litigation is located.” Importantly, however, Section 47.122, Florida Statutes, provides that “[f]or the convenience of the parties or witnesses **or** in the interests of justice, any court of record may transfer any civil action to any other court of record in which it might have been brought.” § 47.122, Fla. Stat. (*emphasis added*).

Florida courts consider the following statutory factors in determining whether another venue may be more appropriate: (1) convenience of the parties; (2) convenience of the witnesses; and (3) the interest of justice. *Water’s Edge Dermatology, LLC v. Christopherson*, 367 So. 3d 508, 510 (Fla. 4th DCA 2023). Convenience to the witnesses is the most important consideration. *Id.*; see also *Wynn Drywall v. Aequicap Program Adm’rs, Inc.*, 953 So. 2d 28, 30 (Fla. 4<sup>th</sup> DCA 2007) (“[T]he most important consideration of the three statutory factors in section 47.122 is the convenience of the witnesses.”) (quoting *Brown & Williamson Tobacco Corp. v. Young*, 690 So. 2d 1377, 1379 (Fla. 1st DCA 1997)); see also *Pep Boys v.*

*Montilla*, 62 So. 3d 1162, 1166 (Fla. 4th DCA 2011) (“The convenience of the witnesses is probably the single most important consideration of the three statutory factors.” (quoting *Hu v. Crockett*, 426 So.2d 1275, 1279 (Fla. 1st DCA 1983))).

**A. The Trial Court Abused Its Discretion by Denying the Transfer Based Upon GEICO’s Alleged Failure to Provide Affidavits Addressing Inconvenience to Fact Witnesses.**

At the hearing on GEICO’s Motion to Transfer, Appellee’s counsel argued that the Motion should be denied because GEICO allegedly only demonstrated inconvenience to its corporate representative, Christopher Smith, if the trial were held in Broward County, and that GEICO was required to present affidavits from fact witnesses (i.e., a police officer, doctor or eyewitness to the accident) in order to succeed on its Motion to Transfer. Specifically, Appellee’s counsel argued – without any sworn evidence or legally authority in support – as follows:

THE COURT: Are we going to St. Petersburg?

MR. SILVERSTEIN: I don’t think so, Judge. The affidavit that they – number one, the affidavit that they need to have is from a witness, their witness that they supplied. I was looking. They don’t have any affidavit of anybody that’s testifying, a police officer, a doctor, an eyewitness, anybody that’s saying it’s inconvenient for me.

(A: 1106-1107). Appellee's counsel further argued as follows:

MR. SILVERSTEIN: Christopher Smith is not a witness to anything. He is a corporate designee ... that Geico has decided to designate him to testify. Just – they could pick any person anyplace in the state and make that person their designee and then say, well, you're in the wrong county because we have somebody that we're designating to talk on behalf of the company. That – that just isn't appropriate.

If it was a fact witness, that's fine, but he's never – he's not testifying as a fact witness. He's testifying as a designated witness by GEICO.

(A: 1109). The trial court accepted this argument, and denied GEICO's Second Renewed Motion to Transfer, stating:

THE COURT: Okay. I will continue to deny the motion since there's no fact witness affidavit other than the corporate representative. Thank you.

(A: 1111).

As set forth below, the trial court clearly abused its discretion in denying the transfer. While Mr. Smith was among the *many* witnesses who GEICO argued would be inconvenienced by having to travel from Pinellas County to Broward County for trial, he was not the *only* witness who would be inconvenienced by such travel. Additionally, as addressed below, despite the suggestion of Appellee's counsel, Mr. Smith was not designated as a corporate representative

simply to support a transfer of venue and, in any event, there is no legal authority supporting the proposition that inconvenience to corporate representatives should be disregarded. Rather, the *forum non conveniens* statute contemplates the transfer of actions based upon inconvenience to *any* party or *any* witnesses.

As outlined below, not only is there a plethora of evidence demonstrating that Pinellas County is the most convenient venue for *all witnesses* in this case, but the inconvenience to Mr. Smith, standing alone, sufficed to support the transfer of this case to Pinellas County. While Appellee's counsel suggested at the hearing on the Motion to Transfer that Mr. Smith was designated as a corporate representative merely to support the transfer of venue, arguments of counsel are *not* considered competent evidence to defeat a motion to transfer. Such an argument also runs counter to the *sworn evidence* that GEICO provided demonstrating that Mr. Smith has long been a corporate representative designated to testify on specified topics. Appellee's counsel suggestion that GEICO "could pick any person anyplace in any state and make that person [its] designee" (A: 1109), would run counter to Rule 1.310(b)(6), Florida Statutes, which obligates GEICO to produce a corporate

representative that is adequately educated on the subject matters about which they are called upon to testify, or else face sanctions.

Under Rule 1.310, corporations are required to produce a corporate representative who is reasonably prepared to testify on the specified subject matters through documents, past employees, or other sources to enable the witness to “give complete, knowledgeable, and binding answers on behalf of the corporation.” *Churchill v. DBI Servs., LLC*, 361 So. 3d 896, 905 (Fla. 1<sup>st</sup> DCA 2023) (quoting *Carriage Hills Condo., Inc. v. JBH Roofing & Constructors, Inc.*, 109 So. 3d 329, 334 (Fla. 4th DCA 2013)). “If the designated corporate representative cannot answer questions about the designated subject matters, the corporation has violated its rule 1.310(b)(6) obligation and may be subject to sanctions by the court.” *Id.* at 905. Thus, given its obligations under the Rule, and the potential sanctions if it fails to abide by it, GEICO has, for the past several years, designated Mr. Smith as its corporate representative to testify as to specific issues within his purview -- and for good reason.

As set forth in Mr. Smith’s Sworn Declaration, he has served as GEICO’s corporate representative in *hundreds* of cases (A: 271) – the vast majority of which do not involve a motion to transfer. Mr. Smith

has been designated as one of just of a few corporate representatives because of his long history with the Company (he has been employed by GEICO for 38 years) and his familiarity with its policies and procedures. (A: 270-271). During his tenure, he has served as a liaison between the claims and underwriting departments and assists in explaining policy and procedure to GEICO employees. (A: 270-271). He is intimately familiar with the way the files are kept and the applications and the documents involved with obtaining and renewing an insurance policy. (A: 271). Mr. Smith has significant knowledge regarding, and is regularly called upon to testify as a corporate representative on, the following topics, among others:

- The process undertaken to apply for, purchase, renew and/or modify coverage selections of automobile insurance by phone, including, but not limited to, the application process, the purchasing process, renewal process, coverage modification process, and all necessary forms that must be completed by prospective or current insureds;
- Certain quotes provided and coverage selections ultimately purchased by GEICO applicants and insureds;

- Various facts surrounding completion of the Uninsured Motorist Coverage (UM) Selection/Rejection Form (M9 Form) and the circumstances in which the completion of such M9 Form is required by GEICO;
- Quotes, premium amounts, and/or coverage options provided to prospective insureds;
- The general process for GEICO applicants and insureds to apply for, purchase, renew, or modify coverage selections; and
- GEICO's adherence to the annual notice provisions of Fla. Stat. § 627.727 to notify insureds annually of their options as it relates to Uninsured/Underinsured Motorist coverage and the steps taken by GEICO to fulfill this requirement.

(A: 271-272).

As Mr. Smith indicated in his sworn statement, he is a key witness for GEICO and his testimony is indispensable to the Company's defense, including as to whether GEICO is entitled to a conclusive presumption that Appellee made a knowing, written rejection of UM coverage as a result of execution and submission of the M9 Form, and GEICO's provision of its annual notice, including

its attachment to the notice of premium, and the fact that the annual notice was approved by the OIR. (A: 272).

Moreover, contrary to Appellee's counsel's suggestion, the *forum non conveniens* statute does not mandate the provision of sworn evidence as to inconvenience only from specific types of witnesses, such as fact witnesses. Thus, GEICO's provision of sworn declarations evidencing the inconvenience that Mr. Smith would suffer if the case went to trial in Broward County was more than sufficient to shift the burden to Appellee to respond with sworn evidence rebutting GEICO's contentions, which they failed to do.

Importantly, however, GEICO went beyond merely providing Mr. Smith's sworn statement. GEICO also provided the sworn statement of Don Surrency, which elaborated upon the inconvenience to former Defendant, Cassie Lewis, a key witness in this action. Ms. Lewis is the Claims Manager whom Appellee alleges fraudulently issued a sworn disclosure indicating that Appellee had rejected UM coverage. Ms. Lewis will rebut Appellee's allegations that the M9 Form was void or that she fraudulently or intentionally provided a sworn affidavit as it related to UM coverage for the purpose of misrepresenting the amount of coverage available.

In addition to the inconvenience to Mr. Smith and Ms. Lewis, Appellee's Response to GEICO's First Set of Request for Admissions and Appellee's Witness List also confirmed that Appellee's cause of action accrued *entirely in Pinellas County*, and the vast majority of the witnesses are there. There were no events that transpired in Broward County and there are no witnesses located at or near Broward County that would be relevant to the prosecution or defense of this matter. In that regard, Appellee's discovery responses confirmed the following:

- The subject accident occurred in Pinellas County, Florida. (A: 200-204).
- Lakenya Makayla Mosley, the owner and operator of the vehicle involved in the accident with Appellee, resides in St. Petersburg (Pinellas County), and is expected to testify as to liability, causation and damages. (A: 200, 212).
- Rosetta Brown, a witness to the subject accident, resides in St. Petersburg (Pinellas County), and is expected to testify as to liability, causation and damages. (A: 200, 212).
- The Claims and/or Corporate Representative for Pinellas County, which owns the vehicle that was involved in the subject accident with Appellee, is located in Pinellas County, and is expected to testify as to liability, causation and damages. (A: 200, 212).
- St. Petersburg Police Department Officer Lopez-Carrasquillo, who responded to the subject accident, is

expected to testify as to liability, causation and damages. (A: 200, 212).

- The medical providers that have treated Appellee for the alleged injuries suffered in the subject accident are located in Pinellas County, as are the relevant medical records. (A: 200, 213-214).
- Appellee procured the subject Policy, and the Policy was issued to Appellee, in Pinellas County, and all Policy renewals and Endorsements were issued to Appellee in Pinellas County. (A: 224, 228-268).

In sum, the trial court abused its discretion by (1) ignoring Mr. Smith's sworn statement detailing the inconvenience to him if the case proceeded to trial in Broward County; (2) ignoring Mr. Surrency's sworn statement detailing the inconvenience to Ms. Lewis if the case proceed to trial in Broward County; and (3) ignoring evidence regarding the many other critical witnesses that would be inconvenienced absent the transfer of this action to Pinellas County.

As addressed below, once GEICO provided its sworn evidence documenting that maintenance of this action in Broward County was inconvenient to the parties or witnesses and was not in the interests of justice, it was incumbent upon Appellee to produce sworn evidence in response. Appellee failed to do so, and that alone requires the transfer of this action from Broward County to Pinellas County.

**B. Once GEICO Challenged Venue with Sworn Evidence, Appellee Was Required to Present Sworn Evidence in Response, and His Failure to Do So Requires Transfer.**

This Court has described the parties' respective burdens as it relates to venue selection as follows:

A defendant contesting a plaintiff's facially proper venue selection has the burden of proving the selection is improper and must establish where venue actually lies. *Id.* Once a defendant has challenged venue with an affidavit controverting a plaintiff's venue allegation, the burden shifts to the plaintiff to prove the venue selection is proper. *Id.*

*Christopherson*, 367 So. 3d at 510 (quoting *First Church of Nazarene of Gainesville, Fla., Inc. v. Site Concepts, Inc.*, 265 So. 3d 641, 643 (Fla. 4th DCA 2019)).

A plaintiff's initial choice of forum is "not paramount". *P.V. Holding Corp. v. Tenore*, 721 So. 2d 430, 431 (Fla. 3d DCA 1998); *Montilla*, 62 So. 3d at 1165 ("The plaintiff's forum selection is no longer the 'factor of over-riding importance.'" (quoting *Hu*, 426 So. 2d at 1279)). Once GEICO properly challenged venue – which it did in its Second Renewed Motion to Transfer supported by sworn evidence – the burden shifted to Appellee to prove that their venue selection was proper. Appellee was required to respond with *sworn evidence* demonstrating that venue in Broward County was convenient to the

parties and witnesses and in the interests of justice. *Eggers v. Eggers*, 776 So. 2d 1096, 1098 (Fla. 5<sup>th</sup> DCA 2001)(explaining that the parties must submit affidavits or other evidence demonstrating convenience of the parties and witnesses and the interest of justice, and finding that the trial court abused its discretion in denying the husband's requested transfer of case to Hillsborough County where the husband produced sworn evidence supporting the transfer, and the wife countered with no sworn evidence on the issue); *Shahnasarian v. Tejedor*, 41 So. 3d 348, 351 (Fla. 5<sup>th</sup> DCA 2010)("Here, Dr. Shahnasarian's and Dr. Leitten's affidavits sufficiently controverted appellees' venue allegation, thereby shifting the burden of proof to appellees. To meet that burden, appellees were required to present sworn evidence that their venue selection was proper"); *Gino Vitiello, M.D., P.A. v. Genovese Joblove & Battista, P.A.*, 123 So. 3d 1185, 1188 (Fla. 4<sup>th</sup> DCA 2013)(finding that the plaintiff failed to rebut the defendant's sworn evidence supporting a transfer from Broward to Miami-Dade County since the plaintiff failed to provide sworn evidence establishing that venue was proper in Broward County); *Miller v. Southland Ins. Co.*, 513 So. 2d 800, 801 (Fla. 4<sup>th</sup> DCA 1987)("...once a defendant has challenged venue with

an affidavit controverting a plaintiff's venue allegation, the burden is upon the plaintiff to prove that the selection of venue is proper.”); *Tropicana Prod., Inc. v. Shirley*, 501 So. 2d 1373, 1375 (Fla. 2<sup>nd</sup> DCA 1987)(“In this case, Shirley failed to produce any sworn evidence - either by affidavit or by testimony at the hearing -that his selection of venue was proper. Based upon that fact alone, the trial court erred in finding venue proper in Hardee County when all of the sworn evidence before the trial court indicated that venue was not proper in Hardee County. The unsworn complaint was insufficient to rebut Tropicana's sworn-to evidence of improper venue.”); *Stuart Supply, Inc. v. CSX Transp., Inc.*, 699 So. 2d 814, 816 (Fla. 1<sup>st</sup> DCA 1997) (explaining that when an affidavit has been filed contesting venue, unsworn allegations in the complaint will be insufficient to carry the burden of showing venue is proper).

As addressed below, despite the written discovery responses and sworn declarations proffered by GEICO supporting the transfer of venue from Broward to Pinellas County, Appellee failed to provide *any* evidence – sworn or otherwise -- demonstrating that Broward County was convenient to the parties and witnesses and in the interest of justice. Accordingly, the trial court erred in allowing venue

to stand in Broward County when all of, and the *only*, sworn evidence established that Pinellas County was the most convenient venue for the parties and witnesses and in the interest of justice, while Broward County is clearly inconvenient and would burden all parties and witnesses in this case.

**C. The Mere Fact That GEICO Maintains Offices in Broward County and Broward County is Convenient to Appellee's Attorneys Does Not Support Venue There.**

It is true that GEICO maintains offices in Broward County (which had no involvement in or connection whatsoever to the alleged events giving rise to the lawsuit) and Appellee's counsel is located in neighboring Miami-Dade County. But these facts are wholly insufficient to defeat GEICO's request to transfer this action on *forum non conveniens* grounds.

"A trial court abuses its discretion when it denies a motion to transfer based on *forum non conveniens* where there is only an attenuated connection to a venue that bears no relation to the lawsuit's critical events." *Christopherson*, 367 So. 3d at 510-511. While a corporate defendant's maintenance of an office in the plaintiff's forum of choice is sufficient to establish that venue is statutorily proper under Fla. Stat. § 47.051, it is insufficient to

establish that the forum county is convenient to the witnesses and parties under Fla. Stat. § 47.122. *SMA Behav. Health Servs., Inc. v. Loewinger*, 355 So. 3d 988, 989–90 (Fla. 3rd DCA 2023) (“Given the fact that most, if not all, of the critical events occurred and most, if not all, of the fact witnesses reside in or near Volusia County, the location of [the corporate defendant’s] corporate headquarters in Miami-Dade County does not negate Volusia County as the more appropriate forum); *Eagle Transp. Corp. of N. Carolina v. Roch-Hernandez*, 324 So. 3d 521, 523 (Fla. 4th DCA 2021) (“trial court erred in denying the motion to transfer where the parties’ only connection to Broward County is the fact that Eagle Transport’s registered agent and one of its fueling hubs are located there”); *Avis Rent A Car System, Inc. v. Broughton*, 672 So.2d 656 (Fla. 4th DCA 1996) (trial court abused its discretion in denying transfer of venue from Broward to Brevard County where only connection to Broward County was that the corporate defendant maintained a resident agent in the county and investigating officers and other witnesses were located in Brevard County where accident occurred); *Morrill v. Lytle*, 893 So.2d 671, 673 (Fla. 1<sup>st</sup> DCA 2005) (“Here, the only facts supporting venue in Duval County are that appellants Ayers and

Ryder maintain corporate offices in Jacksonville and that certain of the attorneys practice in Jacksonville. Other than the location of those offices, which the record reflects were not involved with this action, no party or witness is located in Jacksonville and no pertinent document is maintained in Jacksonville”); *Darby v. Atlanta Cas. Ins. Co.*, 752 So. 2d 102, 103 (Fla. 2d DCA 2000)(finding that the trial court abused its discretion in refusing to transfer venue to Polk County in a case seeking declaratory relief on an insurance subrogation claim, even though the defendant insurance company had an office in Orange County, where the Orange County office had no connection to the lawsuit or the underlying claim, the accident occurred in Polk County and the underlying policy was issued there); *Cooper Tire & Rubber Co. v. Est. of Chavez ex rel. Hernandez*, 8 So. 3d 1157, 1159 (Fla. 3rd DCA 2009)(holding that it was an abuse of discretion for the trial court to deny motion to transfer venue to Lee County, despite that one of the defendants had offices in Miami-Dade County, where the accident occurred in Lee County, the individuals involved in the accident resided in Lee County at the time of accident, and all of the witnesses identified in discovery and the first responders resided in Lee County); *Braun v. Stafford*, 529 So. 2d 735,

736 (Fla. 4th DCA 1988)(holding that trial court abused its discretion in denying motion to change venue from Broward to Pinellas County, where collision giving rise to the lawsuit occurred in Pinellas County, the responding police officers and fire rescue team were located there, the injured parties received some medical treatment in Pinellas County, and two passengers in the plaintiff's vehicle were residents of Pinellas County, given that the only connection to Broward County was that the corporate defendant has an office there); *Fla. Power & Light Co. v. Troutman*, 396 So. 2d 743, 744 (Fla. 4th DCA 1981)(holding that it was an abuse of discretion to deny motion to transfer venue to Dade County where accident occurred there and all witnesses were located there, even though the defendant maintained an office in Broward County and the plaintiff's attorneys maintained their principal office in Broward County).

Further, while Broward County might be more convenient for Appellee's Miami-Dade County attorneys, convenience to attorneys has very little relevance in a court's *forum non conveniens* analysis. *See, e.g., Christopherson*, 367 So.3d at 511 ("convenience of the attorneys is usually accorded very little, if any, weight") (internal citations omitted); *Botta*, 222 So. 3d at 609 (finding that, while the

law firm and the attorneys, who were located in Broward County, were parties in the case and serving as their own counsel, those facts did not support maintaining venue in Broward County and holding that the trial court abused its discretion in denying requested transfer of venue on *forum non conveniens* grounds to Seminole County); *Montilla*, 62 So. 3d at 1166–67 (holding that the trial court abused its discretion in refusing to transfer venue from Broward to Sarasota County where the majority of the witnesses resided in Sarasota County and the only connection to Broward County was the plaintiff’s attorney and one defendant who maintained an office there); *Sullivan v. Klein*, 691 So. 2d 21, 22 (Fla. 2d DCA 1997) (“the trial court abused its discretion in denying transfer of venue from Dade County to Pinellas County where both parties are non-Florida residents, the accident occurred in Pinellas County, there are potential witnesses, albeit nominal, residing in Pinellas County, and the only connection to Dade County is the plaintiff’s attorney.”). Accordingly, neither the presence of GEICO offices in Broward County, nor the fact that Broward County is more convenient for Appellee’s attorneys, support venue in Broward County given that the parties, witnesses and the underlying events giving rise to this action

have no connection at all to Broward County, and the unrebutted sworn evidence established that maintenance of this action in Broward County would be a substantial inconvenience to the parties and witnesses.

**D. The Trial Court Abused Its Discretion in Denying Transfer of Venue to Pinellas County Since the Accident Occurred There, Appellee Resides There, and Most of the Witnesses are Located There.**

All of the critical events giving rise to this action occurred in Pinellas County: the Policy was procured and issued in Pinellas County; the M9 Form rejecting UM coverage was executed in Pinellas County; the accident occurred in Pinellas County and the witnesses to the accident are there; the police officer who reported to the accident scene is located in Pinellas County; and Appellee received medical treatment in Pinellas County. Two of GEICO's key witnesses – one of whom was previously a party in this case -- are located in Polk County, which is an hour and 15 minutes away from Pinellas County, as compared to a 3 ½ drive to Broward County. There are no witnesses located in Broward County.

Where, as in this case, the accident occurred in the transferee forum and many or most of the witnesses are located there, Florida

courts have consistently held that it is error to deny a transfer of venue. *Roch-Hernandez*, 324 So.3d at 523 (finding that the trial court abused its discretion in denying transfer of venue to Alachua County where the vehicular accident occurred in Alachua County, none of the witnesses or parties resided in Broward County, and most of the material liability witnesses resided in or near Alachua County); *Morrill*, 893 So. 2d at 673 (collecting cases). Accordingly, the parties' counties of residence and the county where the action accrued strongly favor an action proceeding in such county. See, e.g., *Graham as tr. Of William J. Graham Tr. Dated June 16, 1968 v. Virgil*, 324 So. 3d 12, 13 (Fla. 4th DCA 2021) (holding that the trial court abused its discretion in denying motion to transfer for *forum non conveniens* where the incident at issue took place in another county, and nearly all witnesses were located in that other county); *Mankowitz v. Staub*, 553 So. 2d 1299, 1300 (Fla. 3d DCA 1989) (reversing order denying motion to transfer venue from Dade to Monroe County where cause of action accrued in Monroe County, both plaintiffs and individual defendant resided in Monroe County, and only connection to Dade County was that corporate defendant had offices in Monroe and Dade County).

Moreover, the most convenient forum for a claim based on UM coverage is the county where the insured obtained his policy, or “where the accident occurred and where [the plaintiff] received medical treatment.” *State Farm Fire & Cas. Co. v. Sosnowski*, 836 So. 2d 1099 (Fla. 5th DCA 2003). In *Sosnowski*, the plaintiff alleged that her insurer and its agent “fraudulently failed to disclose to her the existence of available uninsured motorist (UM) benefits and to pay her certain UM benefits due under her automobile insurance policy following an accident.” *Id.* at 1100. The Fifth District Court of Appeal held the trial court abused its discretion in denying the insurer’s motion to transfer venue on *forum non conveniens* grounds where the plaintiff’s initial venue selection was because the insurer had an office in the county where the lawsuit was filed. *Id.* The Fifth District found that the most convenient forum was either (1) where the insured obtained her policy or (2) “where the accident occurred and where [the plaintiff] received medical treatment.” *Id.*

Similarly, in a suit for declaratory relief, the underlying relief sought determines venue. *Oliver v. Severance*, 542 So. 2d 408 (Fla. 1st DCA 1989); *Soowal v. Marden*, 452 So.2d 625, 626 (Fla. 3d DCA 1984). And it is likewise an abuse of discretion for a trial court to

deny a motion to transfer venue for *forum non conveniens* in a declaratory relief action where the only connection to the chosen forum is that an insurer has an office located in the county. *Darby*, 752 So. 2d 102 (transferring declaratory judgment action arising from vehicular accident to the county where the accident occurred). Instead, the most convenient forum for an action for declaratory relief on an automobile insurance policy is “the site of the accident, the place where the [insureds’] policy was issued, and the location of the court that will hear the underlying [] claim.” *Id.* at 103 (emphasis added); see also *Am. Vehicle Ins. Co. v. Goheagan*, 35 So. 3d 1001, 1003 (Fla. 4<sup>th</sup> DCA 2010) (“A cause of action on a contract accrues for venue purposes where the breach of that contract occurs, and if a contract involves performance, the breach occurs where the defaulting party fails to perform an act that it has agreed to do.” (quoting *Koslow v. Sanders*, 4 So. 3d 37, 38 (Fla. 2d DCA 2009)) (finding insurer’s obligations on a policy delivered in Polk County should have been performed in Polk County, and therefore, venue for bad faith action was proper in Polk County).

All of the factors cited in the above cases that warranted a transfer of venue are present in this case. GEICO provided sworn

evidence that the Policy was procured and issued in Pinellas County, the M9 form rejecting UM coverage that is central to Appellee's claims was executed in Pinellas County, the Policy was procured and issued in Pinellas County, Appellee resides in Pinellas County, the accident occurred in Pinellas County, and the witnesses to the accident are primarily located in Pinellas County. The GEICO witnesses who are located in Florida are located in Polk County, which is closer to Pinellas County than Broward County. The *only* connection this case has to Broward County is that GEICO maintains offices there and Appellee's attorneys are located in neighboring Miami-Dade County. And faced with GEICO's sworn evidence, Appellee produced no evidence – sworn or otherwise -- to demonstrate that Broward County was the proper venue.

Appellee did not submit a written response to GEICO's Motion to Transfer or any sworn evidence to refute that Pinellas County was the most convenient venue for the parties and witnesses. Appellee's counsel simply argued at the hearing on the Motion to Transfer that the Motion was deficient because it was not accompanied by fact witness affidavits, and that sworn evidence regarding inconvenience to GEICO's corporate representative should not be considered. As

outlined in Section I.A., not only is it an abuse of discretion to disregard the inconvenience to Mr. Smith, GEICO's corporate representative, but this argument further ignores the sworn evidence that GEICO did provide establishing inconvenience not only to Mr. Smith, but also to Cassie Lewis, a former party to this case. In addition, Appellee's own written discovery responses confirm that the witnesses to the accident and the medical providers that treated Appellee's alleged injuries from the subject accident are all located in Pinellas County.

Mr. Smith is GEICO's corporate representative and a key witness on the issue of whether GEICO is entitled to a conclusive presumption that Appellee made a knowing, written rejection of UM coverage as a result of execution and submission of the M9 Form. Ms. Lewis was the Claims Manager at the time who issued the Statement of Insurance Disclosure pursuant to Appellee's request. Ms. Lewis is a former party and a key witness who will rebut Appellee's allegations that the M9 Form was void, or that she fraudulently or intentionally provided a sworn affidavit as it related to UM coverage for the purpose of misrepresenting the amount of coverage available. Both Mr. Smith and Ms. Lewis are located in

Lakeland (Polk County), which is only 1 hour and 15 minutes away from Pinellas County. They would have to commute over 3 ½ hours if the trial were held in Broward County.

In addition, Appellee's written discovery responses confirm that the accident happened in Pinellas County, all of the witnesses to the accident reside in Pinellas County, the St. Petersburg Police Department Officer who reported to the scene is located in Pinellas County, and all of Appellee's medical providers are located there. Appellee also procured the Policy in Pinellas County and it was issued to him there. He executed the M9 Form that is the subject of this litigation in Pinellas County as well. Accordingly, not only do the arguments of counsel have no evidentiary effect because they are not supported by sworn evidence, they are further wholly insufficient to overcome the overwhelming evidence that GEICO presented that demonstrates that this case should be transferred to Pinellas County for the convenience of the parties and witnesses.

**E. The Interests of Fairness and Justice Further Support the Transfer of Venue to Pinellas County.**

This Court has acknowledged that the considerations of the interests of fairness and justice include, but are not limited to, "the

avoidance of a crowded court docket and the imposition of jury duty on an uninvolved community.” *Christopherson*, 367 So.3d at 511 (finding that the interests of justice strongly favored a change of venue and stating: Here, we can parrot *Pep Boys*’ observation that “Broward County is a larger, more populous county, has crowded dockets, and the community has virtually no connection to the case.”); see also *Westchester Fire Ins. Co. v. Fireman's Fund Ins. Co.*, 673 So. 2d 958, 959 (Fla. 3d DCA 1996) (“For summary purposes, this Court now adopts both the literal and philosophical ethos of the Supreme Court wherein Florida should not be the forum for cases that, in reality, have no connection with Florida. In this context, we extend the philosophical train of thought to its next and logical plane: Our district should not be a forum for cases that have little or no connection to Dade and Monroe counties. Therefore, it is the stated policy of our Court to literally apply the doctrine of *forum non-conveniens* where there is little else other than the plaintiff’s choice of venue and where witnesses reside in other more suitable venues”).

Given that this case has no connection at all to Broward County, the interests of fairness and justice dictate that this case should be transferred to Pinellas County, the venue where the

accident occurred, the Policy issued and renewed, the M9 Form that is central to this case was signed, and where Appellee and most of the witnesses reside. The Judicial Circuit in and for Broward County has the second highest volume of circuit civil filings in the state of Florida, with 24,400 circuit civil filings in fiscal year 2022-2023, compared to only 9,966 circuit civil filings in Pinellas County. It is therefore unfair to burden an already crowded court docket in a situation where neither the parties nor the cause of action have any connection to Broward County.

### **CONCLUSION**

GEICO met its burden of demonstrating, through sworn evidence, that venue should be transferred from Broward to Pinellas County based upon convenience to the parties and witnesses and in the interests of justice, and Appellee provided no evidence – sworn or otherwise – to rebut GEICO’s evidence. The trial court abused its discretion by denying GEICO’s Motion to Transfer on the basis that GEICO had not provided affidavits of fact witnesses, where it had produced sworn statements regarding inconvenience to its corporate representative (Mr. Smith) and a witness and former party in this case (Ms. Lewis), Appellee’s discovery responses substantiated that

the witnesses to the accident, and the medical providers who treated Appellee, were all located in Pinellas County, and the Policy was procured and issued and the M9 Form central to this case was executed in Pinellas County. This Court should therefore reverse the trial court's order denying GEICO's Motion to Transfer and remand this case with instructions that venue be transferred to the Sixth Judicial Circuit Court in and for Pinellas County, Florida.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that the foregoing was filed on December 26, 2024, using the Florida Court’s E-Filing Portal, which will send a copy to:

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