

IN THE CIRCUIT COURT OF THE  
EIGHTEENTH JUDICIAL CIRCUIT IN AND FOR  
BREVARD COUNTY, FLORIDA

CASE NO.: 05-2014-CA-49472-XXXX-XX

AMANDA PARK,

Plaintiff,

vs.

STATE FARM MUTUAL AUTOMOBILE  
INSURANCE COMPANY, a foreign  
Corporation; and LOGAN K. ATKINSON,

Defendants.

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**ORDER GRANTING PLAINTIFF'S MOTION TO STRIKE DEFENDANT, STATE  
FARM MUTUAL AUTOMOBILE INSURANCE COMPANY'S, EXPERT WITNESS,  
MICHAEL ZEIDE, M.D.**

THIS CAUSE came on before the Court upon Plaintiff's Motion to Strike Defendant, STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY's ("State Farm"), Expert Witnesses, Dr. Michael Zeide, M.D., and Dr. David Gushue, Ph.D on August 22, 2015. Having considered the Motion, Memorandum, argument of both counsels, the relevant legal authority, the depositions of both experts, and a review of the record of these proceedings, Plaintiff's Motion to Strike Dr. Zeide is hereby **GRANTED**.<sup>1</sup> If this Court has never seen gamesmanship by a party before, it has now. State Farm's egregious conduct in these proceedings necessitates what this Court recognizes is one of the most severe sanctions that can be imposed on a party.<sup>2</sup>

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<sup>1</sup> The Motion to Strike Dr. Gushue is moot as this Court granted Plaintiff's *Daubert/Frye* Motion to Exclude Testimony of David Gushue, Ph.D. However, had this Court denied Plaintiff's *Daubert/Frye* Motion, this Court would grant Plaintiff's Motion to Strike Dr. Gushue as a sanction for the same, egregious conduct on the part of State Farm.

<sup>2</sup> Counsel for Defendant suggested the appropriate remedy was a continuance to allow State Farm additional time to comply with the Court's August 10, 2016 Order. First, the Court sees granting a continuance as a reward and not a sanction, especially since State Farm moved for a continuance three days prior to this hearing (and the start of trial). Second, there is no indication on the record that granting more time will result in compliance with this Court's Order by State Farm. An affidavit filed by State Farm states they do not keep the discovery the Court has ordered it to produce and it will cost nearly \$500,000 to decipher the information. Dr. Zeide indicated in his deposition that he does not keep those records and would not produce it. Finally, Exam Works

The basis for this Court's determination that the most appropriate remedy is striking State Farm's Expert Witness, Dr. Michael Zeide, is two-fold. First, this Court has determined that State Farm violated a Court Order requiring it to produce Boecher impeachment materials in response to Plaintiff's Expert Interrogatories. This violation was intentional, deliberate, and calculated, and this Court finds State Farm's explanation for violating the Court Order disingenuous at best. Direct and intentional violation of a Court Order is sufficient grounds to strike a witness in its own right. See, e.g., State Farm Mut. Auto. Ins. Co. v. Swindoll, 54 So. 3d 548 (Fla. 3d DCA 2011); Heathrow Master Ass'n, Inc. v. Zulia, 52 So. 3d 811 (Fla. 5th DCA 2011). State Farm's gamesmanship did not stop there as it not only violated this Court's Order requiring disclosure of Boecher discovery, it actively engaged in an artifice to shield itself from disclosing this information precisely to keep from putting its cards on the table and allow Plaintiff to cross examine its Experts on highly relevant bias evidence. State Farm in this case has persistently obfuscated its answers in what amounts to an artifice.

The Court Order that was violated was announced at a hearing on Plaintiff's Motion to Compel Better Answers to Expert Interrogatories on June 29, 2016 and entered on August 10, 2016. This Order required State Farm to provide responsive answers to Plaintiff's Expert Interrogatories. Specifically, this Court ordered State Farm to provide the following information: (1) the number of claims each expert witness rendered opinions or evaluations for any entity of State Farm in the preceding three years; (2) the identity of each claim that each expert witness proffered deposition or trial testimony in the preceding three years; and (3) the total amounts paid to each expert witness by State Farm for all services rendered in the preceding three years. The Court's August 10 Order also required Counsel for Defendant to provide the same sworn answers as State Farm. The Order required answers to be verified and sworn to by a representative of State Farm and served no later than August 19, 2016.<sup>3</sup>

This Order was violated almost in its entirety. After the close of business on August 19, 2016 (with trial set to start on Monday), State Farm served its Amended Answers to Plaintiff's Expert Interrogatories. First, State Farm's answers were not sworn to by a representative of State Farm and thus State Farm was in violation of this Court's Order. Additionally, Counsel for Defendant did not provide any answers regarding either Dr. Gushue or Dr. Zeide resulting in another direct violation of the same Court Order.

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has thus far ignored at least two subpoenas served upon officers in Florida and Georgia and there is no indication that compliance will ever occur. Thus granting a continuance rewards State Farm for their conduct without a scintilla of evidence that State Farm will cure its non-compliance with this Court's Order.

<sup>3</sup> The Order required State Farm to provide additional responses, however, those responses are not central to this discussion and are thus omitted from this Order.

Moreover, with regard to State Farm's actual responses, instead of providing the information this Court ordered it to, State Farm's answers instructed Plaintiff to refer to an affidavit from a claims representative. In this affidavit, State Farm stated that it does not keep any of the above records in the ordinary course of business and that to compile this information with respect to Dr. Zeide would require a manual review of 29,350 claims files, 56,670 transactions, and cost approximately \$494,100 (not including "intangible" costs).<sup>4</sup> State Farm insists that its database is incapable of readily determining (1) how much an individual Expert has been paid by State Farm; (2) how frequently an Expert has been hired by State Farm to perform legal services; and (3) how frequently said Expert has provided testimony on behalf of State Farm. First, an affidavit is non-responsive to the interrogatories and is a direct violation of the August 10th Order. Furthermore, the arguments raised in the affidavit were the same argument made in Allstate v. Boecher over 17 years ago. In fact, Judge Gary Farmer, Sr., authoring the Fourth District's Opinion in Boecher prior to the Supreme Court of Florida's Opinion, eloquently stated:

To be sure, we live in the age of computers—not the bygone era of hooded clerics poring over ancient manuscripts seeking hidden truths. A labor that, just a few years ago, might have taken office clerks weeks or months now entails mere milliseconds of data processing time. It occurs to us that, in this pervasively computerized generation of doing business, any going concern would be sorely tried to establish burdensomeness in the mere retrieval of this kind of information.

Allstate Ins. Co. v. Boecher, 705 So. 2d 106, 108 (Fla. 4th DCA 1998), *opinion approved of*, 733 So. 2d 993 (Fla. 1999).

Furthermore, State Farm's current position is nearly identical to Allstate's position in Allstate v. Hodges in 2003. In Hodges, Fourth District Court of Appeals again stated:

However, in the three years following the issuance of Boecher, Allstate still has not implemented a computer program or system for keeping track of the information. In fact, Allstate used two of the very same affidavits it used in Boecher to explain that its computer system did not have the information requested readily accessible. In this day of the computer age, and in light of the Boecher court's serious emphasis on the need for the very type of information requested, Allstate may want to reconsider adapting its computer system to provide easier access to the requested information.

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<sup>4</sup> To compile this information for Dr. Gushue would require manual review of 596 claims files and 695 transactions. The Affidavit is not clear whether the estimated \$494,100 cost includes compiling the data for Dr. Gushue or just for Dr. Zeide.

Allstate Ins. Co. v. Hodges, 855 So. 2d 636, 641 (Fla. 4th DCA 2003). The affidavit filed by State Farm in this instance is strikingly similar to the affidavit filed by Allstate in Hodges. Both the Hodges affidavit and State Farm's affidavit in this case detail that the insurance company does not keep these records in the ordinary course of business, can only produce the amounts paid by Tax Identification Numbers, and that compiling the information would require manual review of files and cost a substantial amount of money.<sup>5</sup> For at least 13 years – and arguably 17 years – State Farm has been on notice that it should “adapt[] its computer system to provide easier access to” Boecher discovery. Id.

Instead of adapting its computer system in the 17 years since Boecher and 13 years since Hodges, State Farm opted to only track how much a particular Expert's practice has been paid by Tax Identification Number. Even more egregious is the fact that in this instance the Tax Identification Number through which State Farm tracks its payments does not even tie to the expert's practice. As it relates to Dr. Zeide, an intermediary company called Exam Works is utilized to filter all payments made to Dr. Zeide.<sup>6</sup> State Farm pays Exam Works, Exam Works in turn coordinates and schedules a CME with Dr. Zeide, and then Exam Works pays Dr. Zeide's practice directly.<sup>7</sup> State Farm tracks how much it has paid Exam Works by Tax Identification Number. At one point in time Dr. Zeide was a shareholder in Exam Works.

The problem with this business practice is apparent on its face. By only tracking payments made to Exam Works by Tax Identification Number, plaintiffs are unable to get an accurate and reliable amount paid by State Farm to Dr. Zeide directly. Instead, the Tax Identification Number for Exam Works revealed State Farm paid Exam Works \$34,299,351.46 for 18,439 claims and 56,670 transactions from 2013 through 2015. This work was provided by approximately 22,000 physicians throughout the United States.<sup>8</sup> This information is useless to Plaintiff. Plaintiff cannot present this number to the jury to demonstrate how much Dr. Zeide has been paid by State Farm, how many times Dr. Zeide has performed CMEs and other medico-legal services for State Farm, and how many times Dr. Zeide has testified on behalf of State Farm. This business practice directly

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<sup>5</sup> Compare Hodges, 855 So. 2d at 639 and the Affidavit filed by Mike Wallace on behalf of State Farm in the instant proceedings.

<sup>6</sup> Whether Exam Works is used at State Farm's insistence or at Dr. Zeide's insistence is irrelevant in this Court's opinion. State Farm bears the burden of producing Boecher discovery when requested – or in this case is ordered to do so.

<sup>7</sup> As it relates to Dr. Gushue, the intermediary company is called ARCCA Incorporated and functionally plays the same role as Exam Works.

<sup>8</sup> In regards to Dr. Gushue, the Tax Identification Number for ARCCA Incorporated revealed State Farm Paid ARCCA Incorporated \$2,325,381.35 for 511 claims and 695 transactions.

and deliberately obfuscates the truth-seeking function in what amounts to an artifice.<sup>9</sup> According to the Supreme Court of Florida in Boecher:

As we observed in Krawzak, we take “a strong stand against charades in trials.” To limit this discovery would potentially leave the jury with a false impression concerning the extent of the relationship between the witness and the party by allowing a party to present a witness as an independent witness when, in fact, there has been an extensive financial relationship between the party and the expert. This limitation thus has the potential for undermining the truth-seeking function and fairness of the trial.

. . . .

Although Allstate may not want the plaintiff to discover information regarding the extent of the relationship between [its Expert] and Allstate, as Judge Farmer so aptly observed, that information would be “indisputably relevant and meaningful.”

Boecher, 733 So. 2d at 997-98 (internal citations omitted).

State Farm has made a calculated decision to engage in the above artifice in lieu of adapting their computer systems to avoid putting its cards on the table. The notion that in this day and age an automobile insurance company, which relies heavily on computer-driven analytics, models and systems, does not have the capability to click a button and produce how much any one expert has been paid defies logic. State Farm is one of the largest and most successful corporations in America and it expects this Court to believe that it cannot calculate how much it paid an expert. This is a farce – especially when the corporation operates in a field in which litigation is constantly ongoing. This Court does not find this remotely credible. If in fact State Farm cannot determine how much it has paid Dr. Zeide, it is intentional.<sup>10</sup> The Court’s common-sense approach is supported at least in part by the fact that State Farm has produced the amounts paid to Dr. Zeide in other lawsuits.<sup>11</sup> State Farm has also been able to produce Boecher discovery as it relates to

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<sup>9</sup> As evidence of the misleading nature of State Farm’s business practices in this matter, in its unverified Amended Answers to Plaintiff’s Expert Interrogatories, State Farm stated both it and Counsel for State Farm combined have paid Dr. Gushue \$0.00 directly in this matter.

<sup>10</sup> The same can be said for Dr. Gushue.

<sup>11</sup> Answers to Expert Interrogatories regarding amounts paid to Dr. Zeide by State Farm were produced in the following cases: East v. State Farm Mut. Auto. Ins. Co., Case No. 2006-CA-002411-XXXX-AF (Fla. 15th Cir. Ct. 2006); White v. Taylor, Case No. 50-2011-CA-002084-XXX-AH (Fla. 15th Cir. Ct. 2011); Stith v. Williams and State Farm Mut. Auto. Ins. Co., Case No. 2003-CA-10945-G (Fla. 15th Cir. Ct. 2003); Fischer v. State Farm Mut. Auto. Ins. Co., Case No. 3120-10-CA01-0559 (Fla. 19th Cir. Ct. 2011). Interestingly, Fischer involved both Counsel



other medical doctors in other proceedings.<sup>12</sup> The actions of State Farm in this case amount to a blatant violation of the public policy behind discovery. See, e.g., Surf Drugs, Inc. v. Vermette, 236 So. 2d 108, 111 (Fla. 1970) (“A primary purpose in the adoption of the Florida Rules of Civil Procedure [and discovery] is to prevent the use of surprise, trickery, bluff and legal gymnastics.”)

State Farm’s gamesmanship extended beyond violating this Court’s order and failing to provide Boecher discovery. Below is a brief summary of State Farm’s further attempts to hide the ball from Plaintiff and thwart the truth seeking function of both the judicial and discovery process.

This case involves damages resulting from a motor vehicle crash wherein the vehicle in which the Plaintiff was a passenger was struck from behind by a vehicle operated by Logan Atkinson, an uninsured motorist. Plaintiff alleges that she sustained multiple herniated discs in this automobile collision that are permanent and that will require extensive future medical care, and State Farm disputes Plaintiff’s alleged injuries.

In preparation for trial, this Court entered a Stipulated Order Setting Cut-Off Dates, Mediation, Pre-trial Conference and Trial Date on November 18, 2015, which set the trial date for August 22, 2016. Soon thereafter, and on December 9, 2015, State Farm retained Dr. Michael Zeide, M.D. to perform a Compulsory Medical Evaluation of the Plaintiff. On the same day, State Farm requested that this Compulsory Medical Examination be completed on February 12, 2016. The Compulsory Medical Examination was scheduled.

On February 5, 2016, just one week before the CME was scheduled to be conducted, State Farm unilaterally rescheduled the CME from February 12, 2016 to May 13, 2016. State Farm again unilaterally rescheduled the Plaintiff’s CME on March 17, 2016, changing the date of the Examination from May 13, 2016 to June 10, 2016.

Next, State Farm disclosed its Expert Witnesses on April 22, 2016 – just two days prior to the cut-off date stated in the Stipulated Order Setting Cut-Off Dates, Mediation, Pre-trial Conference and Trial Dates. State Farm’s Expert Witness list included both Michael Zeide, M.D. and David Gushue, Ph.D. In response, Plaintiff propounded Expert Interrogatories to State Farm

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for Defendant, Counsel for Plaintiff, and Dr. Zeide. All of the aforementioned Expert Interrogatories and Answers are a part of the record.

<sup>12</sup> In Stith v. Williams and State Farm Mut. Auto. Ins. Co., Case No. 2003-CA-10945-G (Fla. 15th Cir. Ct. 2003), State Farm produced amounts paid directly to the following physicians: Dr. Godstein, Dr. Scuderi, Dr. Levine, Dr. Everett Dr. Uricchio, **Dr. Zeide**, and Dr. Pfeiffer. In Ferranti v. State Farm Auto. Mut. Ins. Co., (Case No. 05-2013-CA-038973-XXXX-XX (Fla. 18th Cir. Ct. 2013), State Farm produced amounts paid directly to Dr. Foley and Dr. Schechter. All of the aforementioned Expert Interrogatories and Answers are a part of the record.

on May 6, 2016, requesting information regarding the experts State Farm anticipated it would call to testify at trial. Included in Plaintiff's discovery request were financial bias interrogatories that are the subject of the aforementioned violation of this Court's Order.

State Farm's first set of Answers to Plaintiff's Expert Interrogatories was served on June 6, 2016, and was deficient for several reasons. First, State Farm served unverified Answers to Plaintiff's Expert Interrogatories. Even more egregious, State Farm's answers were wholly inadequate and evasive. Plaintiff requested information regarding the total amount of money paid by State Farm to each Expert Witness in the preceding three years, the case lists of each listed Expert Witnesses for the preceding three years, and a list of other cases in which each Expert had rendered opinions on behalf of State Farm for the preceding three years; each request was objected to as being overly broad, unduly burdensome, oppressive, and not reasonably calculated to lead to the admissible discovery. State Farm claimed it does not maintain these records in the ordinary course of business. State Farm made this objection despite the Boecher opinion declaring this information not only discoverable, but highly relevant and admissible at trial. See Boecher, 733 So. 2d at 997, quoted supra. These objections were baseless not only based on Boecher, but also pursuant to Rule 1.280 of the Florida Rules of Civil Procedure. To top off the first round of gamesmanship, in its first Answers, State Farm sought either a protective order to prevent having to disclose this highly relevant financial bias information or to compel Plaintiff to pay the cost of compiling this discovery.

Getting Dr. Zeide's testimony was the next round of gamesmanship. On June 10, 2016, Dr. Zeide performed his Compulsory Medical Examination and Plaintiff requested deposition dates to depose Dr. Zeide. Plaintiff was given a date from State Farm on June 13, 2016, and the earliest option to depose Dr. Zeide was August 1, 2016. The discovery deadline was August 5, 2016. On June 16, 2016, Plaintiff again requested earlier dates to depose Dr. Zeide. Dr. Zeide's deposition was scheduled for August 4, 2016 – one day prior to the discovery cut-off. Furthermore, Dr. Gushue's deposition was scheduled for August 5, 2016 in Pennsylvania, requiring Plaintiff's counsel to make special travel arrangements to travel to Boynton Beach to depose Dr. Zeide then fly from South Florida to Pennsylvania to depose Dr. Gushue the next day. On August 1, 2016, State Farm notified Plaintiff that Dr. Zeide was unavailable for deposition on August 4, 2016, requiring Plaintiff's counsel to rearrange travel plans at its own expense. Ultimately, Dr. Zeide was deposed on August 11, 2016 – nearly a week after the discovery deadline expired.

Dr. Zeide's deposition was critical for Plaintiff to conduct as Dr. Zeide's CME report was vague and avoided giving specific opinions as to causation of injury. Dr. Zeide ultimately opined

at his deposition on August 11, 2016 that Plaintiff had a soft tissue strain as a direct result of the subject automobile accident.<sup>13</sup>

In the interim, the gamesmanship regarding Plaintiff's Expert Interrogatories continued. Plaintiff filed a Motion to Compel Better Answers to Expert Interrogatories on June 24, 2016. A hearing on the matter was held in front of this Court on June 29, 2016, and, after hearing arguments on the matter from both parties, this Court granted Plaintiff's Motion to Compel Better Answers to Expert Interrogatories. State Farm was ordered to provide responsive answers within thirty days and Plaintiff was instructed to draft a proposed order. State Farm disputed Plaintiff's proposed order, and because of this delay, the Order was not entered until August 10, 2016. State Farm had from June 29, 2016 until August 19, 2016 to provide responsive answers (three days prior to the start of trial). In essence, State Farm obfuscated an otherwise clear Order from this Court for the sole purpose of buying almost sixty days – from June 29, 2016 until August 19, 2016 – to provide responsive Answers that should have been provided in its original response served on June 6, 2016. In an abundance of caution and to avoid any ambiguity, this Court's August 10th Order explicitly stated which Answers to Plaintiff's Expert Interrogatories State Farm was required to serve new and responsive answers to. Furthermore, this Court's Order mandated that said Answers be verified and sworn to by a representative of State Farm.

On August 2, 2016, State Farm moved for a Date Certain trial, requesting that trial begin on August 22, 2016 – the original date in the Stipulated Order Setting Cut-Off Dates, Mediation, Pre-trial Conference and Trial Date entered on November 18, 2015.

On Friday, August 19, 2016 at 5:32 PM – after the close of business, with trial set to begin the following Monday on August 22, 2016 and one treating physician's video testimony already perpetuated for trial – State Farm served its Amended Answers to Expert Interrogatories. Once again, State Farm's amended answers were unverified, resulting in a direct violation of this Court's August 10th Order and Rule 1.340(a) of the Florida Rules of Civil Procedure. See State Rd. Dep't v. Florida E. Coast Ry. Co., 212 So. 2d 315, 317 (Fla. 3d DCA 1968) (holding that the answer made in response to an interrogatory is required to be the sworn answer of the party making it). Furthermore, State Farm did not provide answers to Plaintiff's Expert Interrogatories, which again was a direct violation of this Court's August 10th Order. In lieu of answering the interrogatories, State Farm's Amended Answers instructed Plaintiff to refer to an attached affidavit from Mike Wallace, a Claim Representative for State Farm. The affidavit was discussed in detail, supra. To reiterate: there can be no clearer direct, intentional, and willful violation of this Court's Order by State Farm.

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<sup>13</sup> It was on this basis that this Court granted Plaintiff's Motion for Partial Summary Judgment as to Liability to include Causation.



State Farm continued to hide the ball. In his deposition testimony, Dr. Zeide was specifically asked whether he reviewed any medical records indicating that Plaintiff suffered from a pre-existing neck condition prior to the accident. Dr. Zeide answered that he had not; an answer that was consistent with the CME Report generated by Dr. Zeide in June, 2016. Plaintiff relied on both of these responses in preparing her witnesses for trial. On August 18, 2016, State Farm filed an addendum to Dr. Zeide's deposition testimony. This addendum by Dr. Zeide stated that he misspoke at his deposition and that he had in fact reviewed extensive medical records detailing prior chiropractic treatment by the Plaintiff, and that in his opinion the Plaintiff had a pre-existing cervical injury, and thus setting forth a new opinion based on reviewing additional records. Dr. Zeide had this epiphany – that he conveniently failed to mention the medical care that was central to State Farm's defense – **after his deposition and after a representative of State Farm reminded him of these records.**<sup>14</sup> This Court does not find this explanation credible. It is incredulous to think that Dr. Zeide conveniently misspoke at his deposition and failed to opine that the Plaintiff had pre-existing cervical neck condition when Plaintiff is claiming multiple herniated discs in her cervical spine as a result of the accident. No clarification was ever offered by State Farm or by Dr. Zeide to explain why Dr. Zeide's CME Report was devoid of any mention of these same pre-accident chiropractic records or her pre-existing cervical neck condition. The Addendum solely referenced his deposition testimony as errant.

Furthermore, Plaintiff became aware of this addendum setting forth new opinions based on a review of critical records not previously disclosed while sitting in a conference room waiting to continue the video deposition of one of the treating physicians.<sup>15</sup> This deposition was properly noticed as a video deposition for the perpetuation of trial testimony. The filing of an addendum in the middle of one of Plaintiff's video deposition perpetuated for use at trial is as if the addendum had been filed during trial. As such, it is highly prejudicial, wholly unacceptable, and the quintessential example of trial by ambush.

In an attempt to cover all of its bases and discover relevant Boecher impeachment material, Plaintiff sought to discover the information from Dr. Zeide during his deposition. Dr. Zeide was extensively questioned regarding the financial relationship between himself

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<sup>14</sup> Defendant moved for continuance on August 19, 2016. In its Motion for Continuance, Counsel for Defendant stated "Dr. Zeide has been reminded that these records were provided to him in advance of his compulsory medical examination and consequently prepared an addendum to his original CME report." Defendant's Motion for Continuance, paragraph 5

<sup>15</sup> The trial testimony of one of Plaintiff's treating physician began in August 16, 2016 and was adjourned and continued on August 18, 2016.

and State Farm.<sup>16</sup> Dr. Zeide testified that he did not know how much money State Farm paid him for CMEs in 2013, 2014, 2015, or 2016 to date, and directed Plaintiff's counsel to seek payment information from State Farm.<sup>17</sup> Finally, Dr. Zeide said that the only person who would have this information besides State Farm was his accountant and if his accountant was ordered to produce said records, Dr. Zeide would object and assert an accountant-client privilege and instruct his accountant not to produce this information.

Realizing that Dr. Zeide had no knowledge of how much State Farm had paid him in the past three years and facing a trial date that was just days away, Plaintiff subpoenaed Exam Works to obtain this financial bias information directly. Plaintiff subpoenaed the Florida registered agent of Exam Works, commanding them to provide within 5 days billing information and other documentation regarding payments made to Dr. Zeide from January 1, 2013 to the present. As of the date of this hearing, no documentation was provided. On August 10, 2016, this Court entered an Order appointing a commissioner for service of process, which allowed Plaintiff to serve a subpoena on Exam Works in Atlanta, Georgia. The subpoena was served on August 15, 2016. The deadline for compliance was August 20, 2016, and as of August 21, 2016, Exam Works has not complied with the subpoena. Finally, on August 12, 2016, the Florida subpoena to Exam Works was submitted to the Georgia Clerk for domestic issuance. As of the date of this hearing, the subpoena has not been issued for service. In regards to all of the issued subpoenas, Exam Works has not complied with these requests.

It is abundantly clear that State Farm actively and intentionally refused to put their cards on the table in this matter. Plaintiff was denied their right to discover relevant Boecher discovery, was ambushed by new opinions at trial, and faced stonewalling by State Farm every step of the way. Striking Dr. Zeide was not an easy decision for this Court, especially given that striking Dr. Zeide would result in excluding State Farm's most important witness. Kaye v. State Farm Mut. Auto. Ins. Co., 985 So. 2d 675, 677 (Fla. 4th DCA 2008)("[S]triking a witness is a drastic remedy which should be utilized only under the most compelling circumstances. This is particularly so when the exclusion would be of a party's most important witness.")(internal citations omitted). However, State Farm's actions in this matter demonstrate the most compelling circumstances this

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<sup>16</sup> Dr. Zeide was asked about the payments that he received from State Farm, and explained that he does not get paid directly from State Farm but instead is paid by Exam Works. Despite testifying in his deposition that he has little knowledge of how Exam Works functions, Dr. Zeide formerly held an ownership interest in Exam Works. (See generally deposition of Dr. Zeide, pages 84-95). Dr. Zeide was asked, "But it seems like there's a lot that you don't know about as far as the inner workings of how Exam Works pays you, is that accurate?" He answered, "I think that's accurate, but I don't—again, it's not relevant to how they pay me or how it's done." (See Zeide deposition, page 92, lines 16-20).

<sup>17</sup> Dr. Zeide also opined that Exam Works could not provide this discovery either.

Court has seen in the past eighteen years. This Court carefully weighed all that has happened and finds that in the interest of justice and fairness the actions of State Farm warrant the striking of Dr. Zeide.

The prejudice to the Plaintiff from this obfuscation of the truth-seeking function by State Farm is apparent. Plaintiff timely produced all Boecher discovery requests regarding her expert witness(es). State Farm can adequately ask her experts on cross-examination into these highly relevant matters, as Boecher, Rule 1.280 of the Florida Rules of Civil Procedure, and Boecher's progeny require. Plaintiff does not have the same opportunity, resulting in a substantial advantage at trial for State Farm. Among other things, this Court's role is to ensure that no party has an inherent advantage over the other, especially when said advantage is derived from the intentional violation of a Court Order by that party, and to do otherwise results in severe prejudice to Plaintiff.

**ORDERED AND ADJUDGED** that Plaintiff's Motion to Strike Defendant, STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY's Expert Witness, Michael Zeide, M.D. is hereby **GRANTED**.

**DONE AND ORDERED** this 30<sup>th</sup> day of August, 2016 at Viera, Brevard County, Florida.

  
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**GEORGE W. MAXWELL III**  
**CIRCUIT JUDGE**

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