

IN THE COUNTY COURT OF THE TENTH JUDICIAL  
CIRCUIT OF FLORIDA, IN AND FOR POLK COUNTY

PAUL J. HAWKS,

Plaintiff,

vs.

CASE NO.  
2012SC-001023-0000-LK

PROGRESSIVE CASUALTY  
INSURANCE COMPANY,

Defendant.

\_\_\_\_\_ /

RAYMOND E. GUNDER, JR.,

Plaintiff,

vs.

CASE NO.  
2012SC-001383-0000-LK

STATE FARM MUTUAL AUTOMOBILE  
INSURANCE COMPANY,

Defendant.

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RAYMOND E. GUNDER, JR.,

Plaintiff,

vs.

CASE NO.  
2012SC-001444-0000-LK

STATE FARM MUTUAL AUTOMOBILE  
INSURANCE COMPANY,

Defendant.

\_\_\_\_\_ /

RAYMOND E. GUNDER,

Plaintiff,

vs.

CASE NO.  
2012SC-001661-0000-LK

STATE FARM MUTUAL AUTOMOBILE  
INSURANCE COMPANY,

Defendant.

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RAYMOND E. GUNDER, JR.,  
Plaintiff,

vs.

CASE NO.  
2012SC-001878-0000-LK

STATE FARM MUTUAL AUTOMOBILE  
INSURANCE COMPANY,

Defendant.

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RAYMOND E. GUNDER, JR.,

Plaintiff,

vs.

CASE NO.  
2012SC-002362-0000-LK

STATE FARM MUTUAL AUTOMOBILE  
INSURANCE COMPANY,

Defendant.

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RAYMOND E. GUNDER, JR.,

Plaintiff,

vs.

CASE NO.  
2012SC-002363-0000-LK

STATE FARM MUTUAL AUTOMOBILE  
INSURANCE COMPANY,

Defendant.

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RAYMOND E. GUNDER, JR.,

Plaintiff,

vs.

CASE NO.  
2012SC-002470-0000-LK

STATE FARM MUTUAL AUTOMOBILE  
INSURANCE COMPANY,

Defendant.

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RAYMOND E. GUNDER, JR.,

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COLLISION CONCEPTS, INC.,

Plaintiff,

vs.

CASE NO.  
2012SC-002967-0000-LK

STATE FARM MUTUAL AUTOMOBILE  
INSURANCE COMPANY,

Defendant.

TRANSCRIPT OF PROCEEDINGS

DATE TAKEN: December 13, 2012  
TIME: 1:18 p.m. - 2:18 p.m.  
PLACE: Polk County Government Center  
Courtroom 216  
930 East Parker Street  
Lakeland, Florida 33801  
BEFORE: HONORABLE REINALDO OJEDA  
COUNTY COURT JUDGE

Proceedings taken before:  
Tami Cline  
Registered Merit Reporter  
Certified Realtime Reporter  
Florida Professional Reporter

## APPEARANCES

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1           THEREUPON, the following proceedings were had  
2 and taken:

3           THE BAILIFF: All rise. County court in and  
4 for Polk County, Florida is in session.

5           THE COURT: All right. Good afternoon. I'm  
6 Judge Reinaldo Ojeda. We are here in several cases.  
7 For the record, they are 2012SC-001023, that is Paul  
8 J. Hawks versus Progressive Casualty.

9           We also have 2012SC-001383, Raymond Gunder  
10 versus State Farm Mutual.

11           Also, 2012SC-001444. That's Raymond Gunder  
12 versus State Farm Mutual.

13           2012SC-001661, Raymond Gunder versus State Farm  
14 Mutual.

15           2012SC-001878, Raymond Gunder versus State Farm  
16 Mutual.

17           2012SC-002362, Raymond Gunder versus State Farm  
18 Mutual.

19           2012SC-002363, Raymond Gunder versus State Farm  
20 Mutual.

21           2012SC-002470, Raymond Gunder versus State Farm  
22 Mutual.

23           And, lastly, 2012SC-002967, Collision Concepts  
24 versus State Farm Mutual.

25           We are here on defendant's Motion to Dismiss

1 due to lack of standing. The issue is whether  
2 Raymond Gunder, Jr., or Paul Hawks or Collision  
3 Concepts as grantee with the power of attorney must  
4 allege in the caption of the complaint that they are  
5 the grantee of such power of attorney or allege that  
6 he is standing as attorney-in-fact when the body of  
7 the complaint clearly pleads that Raymond Gunder,  
8 Jr., or Collision Concepts or Paul Hawks are, in  
9 fact, the grantees of a power of attorney, and  
10 further power of attorney is attached as an exhibit  
11 to the complaint.

12 I'll read into the record at this paragraph  
13 Number 3 of the respective complaints. Paragraph  
14 Number 3 holds on or about so-and-so date a valid  
15 durable power of attorney was executed granting  
16 either Gunder or Collision Concepts or Paul Hawks  
17 limited power of attorney to institute, prosecute,  
18 defend, compromise, settle, appeal or terminate any  
19 administrative proceedings, civil claims, litigation  
20 or other proceedings against State Farm. Said power  
21 of attorney is attached hereto and incorporated  
22 herein as an exhibit.

23 Further, paragraph 4 of the complaint also  
24 states for purposes of this case Gunder stands in  
25 the shoes of the grantor of the power of attorney.

1 All the complaints have the similar language.  
2 All the complaints have been attached as exhibits  
3 when filing -- well, have the power of attorney  
4 attached as an exhibit when filing the complaint.

5 The Court has found no legal authority  
6 prohibiting Mr. Gunder or Paul Hawks or Collision  
7 Concepts from including their name in the caption of  
8 the case without also mentioning the grantor of the  
9 power of attorney, especially when paragraph 3 and 4  
10 of said complaints clearly alleges that Mr. Gunder  
11 or Hawks or Collision Concepts is the grantee of a  
12 power of attorney and is quote-unquote standing in  
13 the shoes of the grantor for purposes of filing suit  
14 against defendants, thus, suing in a representative  
15 capacity.

16 Defense counsel for the respective defendants  
17 have provided the Court with the case of Sivak  
18 versus Brady-Spencer Management cited at 590 So.2d  
19 944, 50 CA 1991. That is the case upon -- that's  
20 the case upon which defendants rely. In that  
21 particular case the Court dealt with a real estate  
22 transaction in which a purchaser gave a power of  
23 attorney to a grantee who then sued as a  
24 quote-unquote successor-in-interest after she had  
25 been conveyed an assignment. The court in that case

1 held that she could not sue as a  
2 successor-in-interest because there was no  
3 assignment and, thus, she lacks standing. The court  
4 correctly held that issue as far as that. The court  
5 correctly held that sense that she was the grantee  
6 of a power of attorney, she could only sue in her  
7 representative capacity of the grantor.

8 Sivak versus Brady-Spencer Management is not  
9 analogous to the case at bar because, number one, it  
10 deals with a lawsuit brought by someone as an  
11 assignee when, in fact, there have been no  
12 assignments. The case at bar does not deal with  
13 assignments in any fashion.

14 Secondly, Sivak holds that a grantee of a power  
15 of attorney must bring suit in their quote-unquote  
16 representative capacity. This Court finds that  
17 after reading paragraphs 3 and 4 of the alleged  
18 complaints, along with the attached power of  
19 attorney that was attached to every single complaint  
20 when filed, the Court finds that it is obvious that  
21 Raymond Gunder and Paul Hawks and Collision Concepts  
22 are bringing suit in their respective capacities.

23 Once again, as I said, per paragraph 3 of the  
24 respective complaints, it is very clear that the  
25 plaintiffs, whether it be Gunder, whether it be



1 Collision Concepts or whether it be Paul Hawks, it  
2 is very clear that they have -- there has been a  
3 power of attorney executed making them grantees in  
4 this particular case with the power to institute,  
5 constitute, defend, compromise, settle, appeal or  
6 terminate any proceedings and any litigation. Said  
7 powers of attorney have been attached to the  
8 complaints, and paragraph 4 of the respective  
9 complaints clearly state that either Gunder,  
10 Concepts or Hawks quote-unquote stand in the shoes  
11 of the grantors.

12 Furthermore, Florida Rule of Civil Procedure  
13 1.210(A) holds that a personal representative may  
14 sue in that person's own name without joining the  
15 party for whose benefit the action is brought.

16 Based on the totality of the circumstances, in light  
17 of the fact that the power of attorneys are attached  
18 to the complaints, that paragraphs 3 and 4 of the  
19 complaints make it very clear that either Gunder,  
20 Concepts or Hawks is suing in a representative  
21 capacity, that they hold powers of attorney for the  
22 grantors, and, as such, are suing on their behalf or  
23 quote-unquote standing in the shoes of the grantors.

24 Based on the totality, the Court finds that it  
25 is very clear that they are suing as holders of a

1 valid durable power of attorney, and the motion is  
2 going to be denied as far as lack of standing is  
3 concerned. And at this point the Court has ruled on  
4 all the respective cases that I mentioned at this  
5 time.

6 All right. Mr. Geohagan, can you go ahead and  
7 provide the Court with an order, please?

8 MR. GEOHAGAN: Yes, sir, Your Honor.

9 MS. CLARK: Your Honor, if I may approach for  
10 one moment. The case of Collision Concepts versus  
11 Marcus is not in the same stature as the other cases  
12 brought by Raymond Gunder. That case -- and that's  
13 Number 2967 -- is an Assignment of Benefits.

14 THE COURT: Okay.

15 MS. CLARK: And so to the extent your order  
16 would reference Collision Concepts, it doesn't apply  
17 to this situation.

18 THE COURT: How did that one end up on the  
19 docket?

20 MS. CLARK: It was noticed because it's dealing  
21 with a motion for more definite statement, which is  
22 the second argument.

23 THE COURT: Okay.

24 MS. CLARK: So if we can remove that one from  
25 the order.

1 THE COURT: So we will go ahead and remove that  
2 one.

3 Do you have any objection to that,  
4 Mr. Geohagan?

5 MR. GEOHAGAN: No, sir, Your Honor, I do not.

6 THE COURT: We'll go ahead and remove that one  
7 from the order then. All the other ones the order  
8 will apply to.

9 All right. You'll provide me with the order  
10 then?

11 MR. GEOHAGAN: Yes, Your Honor.

12 THE COURT: If you can get that to me within 15  
13 days, that would be great.

14 MR. GEOHAGAN: Yes, sir, Your Honor.

15 THE COURT: For the record, Ms. Clark, anything  
16 else?

17 MS. CLARK: With respect to the standing issue  
18 on Skelly, King and Coachman, I understand your  
19 order, but in order to preserve my record, I think I  
20 need to make my argument --

21 THE COURT: Sure. Go ahead.

22 MS. CLARK: -- for the Pierce, Burns, Lay and  
23 Geohagan cases.

24 THE COURT: That's fine. Go ahead.

25 MS. CLARK: Okay.

1 MR. GEOHAGAN: If I may, Your Honor, that  
2 was -- are we talking about the other --

3 MS. CLARK: No. We're talking about the  
4 standing issue with respect to Case Number 1878,  
5 2362, 2363 and 2470, since there has been no hearing  
6 on that.

7 MR. GEOHAGAN: Okay. I see what you're saying.

8 THE COURT: Were those on the docket today?

9 MS. CLARK: They were on the docket today, but  
10 I haven't been able to present my argument to the  
11 Court. It is the similar argument that's been  
12 raised with respect to Skelly, King and Coachman  
13 which I argued back in August.

14 THE COURT: Okay. Go ahead.

15 MS. CLARK: Okay.

16 MR. GEOHAGAN: Just for practical purposes --  
17 and I guess I don't have any objection to her going  
18 ahead and doing this, but it's the same issue, as  
19 far as I can tell, with regard to the standing issue  
20 anyway, so I expect the same argument because the  
21 motions are presented the same.

22 MS. CLARK: Your Honor, with respect to the  
23 case of Raymond Gunder on behalf of Pierce, Raymond  
24 Gunder on behalf of Burns, Raymond Gunder on behalf  
25 of Lay and Raymond Gunder on behalf of Geohagan,

1           which are the case numbers I just read, 1878, 2362,  
2           2363 and 2470, State Farm would request that the  
3           Court dismiss the complaint based on Mr. Gunder's  
4           failure to properly allege standing, specifically  
5           that the caption does not reflect that the name of  
6           the insured between -- and that the parties have a  
7           contract between State Farm's insured and State  
8           Farm, and right now the caption simply reads Raymond  
9           Gunder versus State Farm.

10           Mr. Gunder is essentially a stranger to the  
11           contract. Although he pleads that he has a power of  
12           attorney, he still is suing in his individual  
13           capacity, and we submit that he may not individually  
14           bring these actions in his own name as he has done.  
15           If anything, the caption should reflect that he is  
16           standing in the shoes of State Farm's insured.

17           One of the reasons that's important is, if in  
18           the event Mr. Gunder receiving a judgment against  
19           State Farm, the judgment will reflect Mr. Gunder has  
20           a judgment against State Farm on a contract that he  
21           is not a party to.

22           We, again, bring up the case Sivak versus  
23           Brady-Spencer Management, 50 CA case from 1991.  
24           That holds as a matter of law that a power of  
25           attorney does not give the grantee -- does not give

1 the grantee holding that power of attorney authority  
2 to become a successor-in-interest or an assignment.  
3 The case in Sivak turns on the power of attorney.  
4 It turns on what rights does the person holding the  
5 power of attorney have.

6 It's analogous to what we have here, Your  
7 Honor. We have Mr. Gunder holding a power of  
8 attorney. He's bringing suit on behalf of somebody  
9 else. And we would respectfully request, based on  
10 the Sivak holding, that the Court grant our Motion  
11 to Dismiss and at a minimum require Mr. Gunder to  
12 allege that he is bringing suit on behalf of State  
13 Farm's insured, as it is the insured, not  
14 Mr. Gunder, who has a contract with State Farm which  
15 is undergirding this entire litigation. It is the  
16 basis for this claim, breach of contract.

17 State Farm, finally, would agree that the  
18 plaintiff has in open court acknowledged paragraph 3  
19 and 4 of the complaint, recognize that Mr. Gunder is  
20 suing on behalf of. It wouldn't be possible for him  
21 to bring that case if he weren't raising that  
22 because it is a contract between State Farm and the  
23 insured, not Mr. Gunder. And it is noteworthy that  
24 Mr. Geohagan has in open court agreed to amend his  
25 complaints going forward to say that they are on

1           behalf of State Farm insureds, and he has so done  
2           that. And he also -- and that's in his last three  
3           complaints.

4                     Based on all of these positions, State Farm  
5           requests that the Court dismiss the complaint in  
6           those four cases as mentioned for lack of standing.

7           THE COURT: All right. Thank you, Ms. Clark.

8                     And Mr. Gunder, any response -- or,  
9           Mr. Geohagan, any response?

10                    MR. GEOHAGAN: Yes, Your Honor. Your Honor, I  
11           would by reference incorporate all my responses at  
12           the last hearing where these arguments were fleshed  
13           out. I would also incorporate by reference my  
14           letter post-hearing that was provided to, Your  
15           Honor, and my respected counterpart dated  
16           August 22nd, 2012, in response to her post-hearing  
17           letter to you with additional arguments and analysis  
18           and again reiterate, Your Honor, as otherwise  
19           reflected earlier in your ruling that in these  
20           particular circumstances neither one of those cases  
21           stand for the proposition that when a case is  
22           brought and where it's sufficiently and clearly in a  
23           clairvoyant fashion pled within the body of the  
24           complaint, that we have a valid durable power of  
25           attorney as a grantee, that we, therefore, must, as

1 a matter of law, include the name of the grantor in  
2 the caption of the case there.

3 There is no legal authority to support that.  
4 This is their Motion to Dismiss. They have the  
5 burden to establish that they should prevail with  
6 regard to any basis for the Motion to Dismiss, and  
7 they have no legal authority to support that.

8 THE COURT: All right. Thank you.

9 Ms. Clark, on behalf of your clients, has made  
10 the record at this point in time. Counsel, anything  
11 else to add?

12 MR. JAMESON: No, Your Honor. We actually had  
13 our arguments back in August. I would refer to that  
14 transcript. Thank you, Your Honor.

15 THE COURT: Thank you very much. At this time,  
16 then, the Motion to Dismiss on behalf of the  
17 respective defendants is denied based on the Court's  
18 order earlier today.

19 And, Mr. Geohagan, if you can provide me an  
20 order, please, as to all the cases within the next  
21 15, 20 days, that would be great.

22 MR. GEOHAGAN: Yes, Your Honor.

23 THE COURT: All right. Thank you.

24 MR. GEOHAGAN: Yes, sir.

25 MS. CLARK: Wait, wait, Your Honor.



1 THE COURT: Yes.

2 MS. CLARK: We have other grounds for dismissal  
3 that we had noticed on the cases I was raising for  
4 1878, 2362 and 2363 and 2470, and that's with  
5 respect to the contract has not been attached, and  
6 the complaint as drafted is indefinite with respect  
7 to the repairs and the actual provisions of the  
8 policy that have been breached. So I would like to  
9 have that heard today if possible and a ruling.

10 THE COURT: Was that noticed for today?

11 MS. CLARK: Yes. That was State Farm's Motion  
12 to Dismiss on the four original cases that were  
13 noticed.

14 MR. GEOHAGAN: Your Honor, just for practical  
15 purposes, we're prepared to address those, what I  
16 would call practically anyway, two additional issues  
17 that they raise in the cases that were not before  
18 Your Honor when we were last before you. There's  
19 three cases that were before you at least with  
20 regards to State Farm at that time. Now there's the  
21 additional ones -- there are like four. I may be  
22 wrong. Anyway, it's not original three.

23 In their Motions to Dismiss with regard to  
24 those cases, they have two, at least the way I have  
25 identified it -- Ms. Clark may have a different

1 perspective, but the way I have identified it is two  
2 additional arguments. We're certainly prepared to  
3 address those today. However, just so you  
4 understand how this came about, I believe Your  
5 Honor, through your judicial assistant, noticed  
6 these for purposes of addressing the one issue that  
7 wasn't addressed in the --

8 THE COURT: That was my understanding. My  
9 understanding was that the only matter we were going  
10 to address today was the Motion to Dismiss based on  
11 lack of standing.

12 MS. CLARK: Your Honor, with all due respect,  
13 we had this -- State Farm noticed for hearing these  
14 four cases the day after Thanksgiving.

15 Mr. Geohagan's son had an emergency medical -- or a  
16 medical procedure. He asked that we transfer the  
17 date, reset the date to the 13th, which is today,  
18 for our motions for dismiss, all grounds. And then  
19 we were notified by the Court that the earlier  
20 three, which you have just ruled on, were going to  
21 be -- you were going to enter your ruling.

22 THE COURT: Okay.

23 MR. GEOHAGAN: Either way I am prepared to -- I  
24 just wanted to -- I thought I was -- maybe I didn't  
25 help. I was just trying to from a practical

1           standpoint allow the Court to understand maybe the  
2           way that the Court looked at it, but I am absolutely  
3           prepared to --

4           MS. CLARK: I would prefer to go ahead and make  
5           our argument today --

6           THE COURT: Okay.

7           MS. CLARK: -- and get the Court to enter a  
8           ruling on that.

9           THE COURT: Okay. All right. Let's see. Can  
10          you pull up one of these cases and go to the Motion  
11          to Dismiss?

12          And the grounds of the motion are?

13          MS. CLARK: With respect to the four cases,  
14          excluding Collision Concepts, the ground is  
15          plaintiff's failure to attach the contract upon  
16          which he sued and that it's an indefinite -- we need  
17          a more definite statement, because he's failed to  
18          allege to what repair charges and policy provisions  
19          are at issue.

20          THE COURT: Didn't we discuss that issue as far  
21          as more definite statement on at least one case at a  
22          prior time?

23          MR. GEOHAGAN: On three of them, Your Honor,  
24          and what I did is I conceded. I wasn't necessarily  
25          conceding that they're correct in their argument,

1 but I am saying I will amend the complaint to  
2 address the issues with regard to the repair  
3 procedures and charges. So for purposes of putting  
4 that to bed so we don't have to --

5 THE COURT: You're still willing to do that on  
6 these cases?

7 MR. GEOHAGAN: I am more than willing to do  
8 that, yes, sir.

9 MS. CLARK: Your Honor, I would request -- we  
10 haven't seen that amendment yet obviously. I would  
11 guess because you hadn't ruled until today. But if  
12 I can get an order from the Court identifying what  
13 needs to be put in there. I would like to make an  
14 argument, too, with respect to my first ground that  
15 the contract hasn't been attached and also as to  
16 what policy provision in the contract the plaintiff  
17 believes State Farm has breached.

18 MR. GEOHAGAN: And those are the two issues for  
19 some reason, but nonetheless the two new issues that  
20 have come about that I am prepared to address today,  
21 because I do know in looking at those that there are  
22 now two additional things, for whatever reason, that  
23 weren't raised up in the original Motions to  
24 Dismiss.

25 THE COURT: Okay. This is as to Raymond Gunder

1           versus State Farm Mutual, Case Number 1878.

2           MS. CLARK: Yes. That's one.

3           THE COURT: All right. Go to the second page,  
4 please.

5           MR. GEOHAGAN: Your Honor, I have a copy of one  
6 of the Motions to Dismiss.

7           THE COURT: That's fine.

8           MR. GEOHAGAN: It's the one from the Burns  
9 case, if you want me to provide it to him so he  
10 can -- that's her Motion to Dismiss in these new  
11 cases, Your Honor, and it includes those two new  
12 issues.

13          THE COURT: This is 2362. You can pull that  
14 one up. We have already addressed the lack of  
15 standing issue. We're moving on. Let's tackle the  
16 failure to attach the policy at issue.

17          Go ahead, Ms. Clark.

18          MS. CLARK: Okay. Your Honor, with respect to  
19 cases 1878, 2362 and 2363 as well as 2470, State  
20 Farm requests that the Court dismiss the complaint  
21 for plaintiff's failure to attach the contract upon  
22 which he is purportedly suing State Farm on.  
23 Rule 1.130(A), Florida Rules of Civil Procedure  
24 quite clearly requires that a bond, note, bill,  
25 exchange, contract -- which is what we're here on --

1 accounts, et cetera, upon which an action may be  
2 brought or defense made shall be incorporated and  
3 attached to the pleading. Plaintiff has not done  
4 that, and so we would ask the Court to dismiss the  
5 complaint on that ground.

6 THE COURT: All right. Mr. Geohagan, what's  
7 your response?

8 MR. GEOHAGAN: Yes, Your Honor, if I can put it  
9 in kind of layman's terms, we kind of halfway  
10 acknowledge the argument on the part of State Farm  
11 in this particular instance. If you'll notice --  
12 and I have got copies here. This is -- you have got  
13 it, but may I approach, Your Honor?

14 THE COURT: Sure.

15 MR. GEOHAGAN: This is defendant's motion. It  
16 was noticed as a Motion to Dismiss but it's a motion  
17 for more definite statement --

18 MS. CLARK: Wait, wait.

19 MR. GEOHAGAN: Hold on a second.

20 MS. CLARK: Your Honor, this is not the cases I  
21 have before you right now.

22 MR. GEOHAGAN: It's not -- it's neither here or  
23 there. Let me make my argument. You will notice --

24 MS. CLARK: For the record --

25 THE COURT: Hold on. Let her make her record.

1           Go ahead.

2           MR. GEOHAGAN: She just did.

3           MS. CLARK: I would like to make sure for the  
4 record that the cases that I referenced on our  
5 second grounds for Motion to Dismiss do not include  
6 the case you have been handed, which is 2967, which  
7 is Collision Concepts as assignee of Marcus versus  
8 State Farm.

9           MR. GEOHAGAN: And I didn't mean to indicate in  
10 any way, shape or form that it was, if I can get to  
11 the point as to why I provided to, Your Honor.

12           Your Honor, you will note in the defendant's  
13 response to our complaint that there is no argument  
14 such as this one, which, by the way, these arguments  
15 were not made for whatever reason in the original  
16 three before you, but there is a reason for that.  
17 If I may approach, Your Honor, this is the complaint  
18 in that case.

19           MS. CLARK: In what case?

20           MR. GEOHAGAN: The same case.

21           MS. CLARK: Okay. Thank you.

22           MR. GEOHAGAN: Now, where, Your Honor, we  
23 acknowledge we failed is if you'll look in the  
24 Collision Concepts case to paragraph 7.

25           THE COURT: Of the complaint?

1 MR. GEOHAGAN: Yes, sir.

2 THE COURT: Okay.

3 MR. GEOHAGAN: And you'll see the parens there  
4 after the reference to policy contract. It says,  
5 "Which Mr. Marcus/Collision Concepts does not  
6 currently have in his/its possession but which is  
7 expected to be obtained through discovery from the  
8 defendant in this case," end parens.

9 Now, where we failed in these cases that you're  
10 hearing right now is we did not put that provision  
11 in there. In the vast majority of these cases, Your  
12 Honor, the insureds do not have their policy  
13 contracts. I think one of the main reasons why is  
14 because --

15 THE COURT: In the cases before the Court do  
16 you have the contract in hand on any of them where  
17 you did not attach it?

18 MR. GEOHAGAN: No, sir. No. And that gets to  
19 the case law on this and the reason why. And the  
20 reason I show you this is I believe the reason why  
21 State Farm didn't take the same argument with regard  
22 to this is because of that allegation. I have two  
23 cases to that extent, Your Honor.

24 MS. CLARK: Your Honor, if we could frame this  
25 argument in response to the four cases that are in



1 front of the Court, I think that would be most  
2 beneficial, since we're talking about the four  
3 corners of the complaint of the four complaints that  
4 are before the Court currently. Either it's been  
5 pled and attached or it hasn't.

6 MR. GEOHAGAN: Ms. Clark, if I could finish my  
7 argument. Then afterwards you can give a rebuttal.

8 THE COURT: I will give you a chance,  
9 Ms. Clark.

10 MR. GEOHAGAN: May I approach, Your Honor?

11 THE COURT: Sure.

12 MR. GEOHAGAN: Your Honor, these cases, the  
13 first one is Equity Premium, Inc. versus Twin City  
14 Fire Insurance dated May 30th, 2007. It's a  
15 Fourth DCA case. And, Your Honor, if you turn to  
16 page 2 of 4 in that case, and if you'll look above  
17 the citation where it says Kreizinger, P.A. versus  
18 Schlesinger, P.A., it says, "The PFCs argue, inter  
19 alia, among other things, that dismissal with  
20 prejudice was inappropriate because they allege in  
21 their complaint that the subject insurance policies  
22 were not in their possession but would be produced  
23 through discovery. We agree."

24 And it goes on at the bottom, "The issues in  
25 this case may turn on provisions of the applicable

1 insurance contracts yet to be discovered by the  
2 PFCs. We, therefore, conclude that dismissal with  
3 prejudice was improper and premature. Accordingly,  
4 we reverse, remand and direct the trial court to  
5 vacate its order dismissing this case and conduct  
6 further proceedings consistent with this opinion."

7 Then if you'll -- coupled with the other case,  
8 the Sachse versus Tampa Music Company case, citation  
9 262 So.2d 17. And, by the way, the Equity Premium  
10 case's citation was 956 So.2d 1257.

11 But going back to Sachse case, that's a 1972  
12 case, Second DCA, Your Honor. And in that  
13 particular matter, Your Honor, you will find that if  
14 you go to page -- at the top it's page 3 of 3, at  
15 the very top. And the specific citation, for the  
16 court reporter's purposes, it looks like it's 19.

17 But, anyway, it's page 3 of 3 at the top for  
18 Your Honor's purposes, right where it has keynote  
19 two. "Failure to attach a copy of the instrument  
20 upon which the action is brought may result in  
21 dismissal of the case. But where the instrument is  
22 not within the pleader's possession or control, as  
23 alleged here, such failure to attach should not be  
24 fatal to the cause, and the pleader should be given  
25 an opportunity by means of discovery proceedings to

1 establish the existence of the instrument."

2 Your Honor, also I say this -- and I can only  
3 say this as an officer of the court. This same  
4 issue was brought by State Farm, albeit different  
5 counsel, back in the beginning of 2011 in another  
6 case. The grantor in that case was Walker and ruled  
7 upon by Judge Griffin and -- relying on those same  
8 cases, and in that particular instance Judge Griffin  
9 gave us the opportunity to amend the complaint so we  
10 could put forth the allegation that is exactly or  
11 similar given the difference in factual scenarios to  
12 the one that is in the Collision Concepts case. And  
13 that is very similar to the language that is set  
14 forth in the Equity Premium, Inc., case, so that we  
15 will have sufficiently alleged that we do not have  
16 possession of the policy contracts, and we are  
17 expected to obtain them through discovery from the  
18 defendant in this case.

19 Your Honor, the case law is very clear. As  
20 long as we allege that, then it's sufficient. We  
21 did not allege that. Therefore, we acknowledge that  
22 to that extent, State Farm's argument has merit.  
23 But to the degree that we have to attach the  
24 contract --

25 THE COURT: You can't attach what you don't

1 have.

2 MR. GEOHAGAN: We can't attach what we don't  
3 have, and that's what that case law represents, Your  
4 Honor.

5 THE COURT: Ms. Clark, how are they supposed to  
6 attach what they don't have?

7 MS. CLARK: Well, Your Honor, he hasn't even  
8 alleged that provision. He has conveniently brought  
9 up another case, Collision Concepts, which doesn't  
10 deal with Mr. Gunder, to cite where he should have  
11 pled it. He hasn't done that in our cases, and we  
12 would be --

13 MR. GEOHAGAN: I agree.

14 MS. CLARK: The Samuels versus King Motor  
15 Company of Fort Lauderdale case, which is 2001 case  
16 from the Fourth District Court of Appeal speaks to,  
17 if you're going to sue on a contract, you have got  
18 to attach it. If he doesn't have it, at a bare  
19 minimum he has got to plead that he doesn't have it,  
20 like he's done it. Because he hasn't done that, we  
21 would request that you dismiss the complaint.

22 MR. GEOHAGAN: Your Honor, I agree with her.

23 MS. CLARK: All right. Then what are we --

24 MR. GEOHAGAN: I agree. Motion to Dismiss --

25 THE COURT: You agree to the extent of

1 dismissing the complaint or allowing you to amend  
2 the complaint?

3 MR. GEOHAGAN: No, no. Well, of course  
4 allowing me to amend it. But I agree with regard to  
5 that specific issue, the Motion to Dismiss should be  
6 granted giving plaintiff's leave to amend consistent  
7 with the case law that I have just provided. So I  
8 think we're on the same page.

9 MS. CLARK: I think we are. I would like the  
10 order to reflect what Mr. Geohagan has agreed to.

11 THE COURT: All right. So we'll go ahead and  
12 rule on that as to all the respective cases. And,  
13 Ms. Clark, put them on the record which are the four  
14 you're talking about.

15 MS. CLARK: Yes. They are 1878.

16 THE COURT: All right. And that is?

17 MS. CLARK: Gunder on behalf of Pierce,  
18 although it's not in the caption -- it's in  
19 paragraph 3 and 4 -- versus State Farm.

20 2362, Gunder on behalf of Burns.

21 THE COURT: Okay.

22 MS. CLARK: 2363, Gunder on behalf of Lay.

23 THE COURT: Okay.

24 MS. CLARK: And 2470, Gunder on behalf of  
25 Geohagan.

1           THE COURT: All right. As to those four cases  
2 just mentioned by Ms. Clark, counsel -- defense  
3 counsel for State Farm Mutual, the Court is going to  
4 grant the Motion to Dismiss insofar as the  
5 complaints will be dismissed to allow the plaintiffs  
6 to amend the complaint to include such language as  
7 either Raymond Gunder or -- it's not Collision  
8 Concepts.

9           MS. CLARK: Right.

10          THE COURT: All four Raymond Gunder?

11          MR. GEOHAGAN: Yes.

12          THE COURT: To include such language as,  
13 "Raymond Gunder does not currently have in his or  
14 its possession the subject contract but which is  
15 expected to be obtained through discovery from the  
16 defendant in this case." So the Motion to Dismiss  
17 is granted insofar as to allow plaintiff to amend  
18 the complaint to reflect that language that the  
19 Court just mentioned. Okay. So your motion is  
20 granted as far as that is concerned.

21                 The next issue then is defense is moving for a  
22 Motion to Dismiss on the grounds of what repair  
23 charges are at issue or moving to clarify what  
24 repair charges are at issue and what policy  
25 provision exactly was alleged in the breach. So

1           it's a motion to clarify the allegation.

2           MS. CLARK: That's right, Your Honor.

3           MR. GEOHAGAN: I may be able to streamline this  
4 as well for Mrs. Clark. With regard to at least the  
5 repair procedures, there may be something else.

6           THE COURT: Let's give a time frame on the  
7 amendment for the previous issue, for amending the  
8 complaint to reflect the language that the subject  
9 contract or policies are not in the possession.

10          MR. GEOHAGAN: Fifteen days, Your Honor?

11          THE COURT: Fifteen days?

12          MS. CLARK: That's fine.

13          THE COURT: All right. We'll say 15 days.

14          MR. JAMESON: Your Honor?

15          THE COURT: Motion granted insofar as to allow  
16 plaintiff to go ahead and have 15 days to amend the  
17 complaints to include the language that he did not  
18 have the contracts or policy in their possession.

19          MR. JAMESON: Your Honor?

20          THE COURT: Moving on to the next issue.

21          MR. JAMESON: Sorry to interrupt, Your Honor.  
22 I have got an order here from August 27th. I just  
23 want some clarification on that regard to the order  
24 you're entering today. This actually has plaintiff  
25 agreeing to amend on parts 2 and 3. I just would

1           like that to reflect -- I would like today's order  
2           to reflect this prior ruling and requiring 15  
3           minutes to amend for us as well.

4           THE COURT: No objection?

5           MR. GEOHAGAN: No objection.

6           MS. CLARK: What's the case number?

7           MR. JAMESON: Yes. We are case number -- it's  
8           Hawks versus Progressive. It is Case Number 001023.

9           THE COURT: That's going to be granted.  
10          Fifteen days.

11          MS. CLARK: Okay.

12          MR. GEOHAGAN: Your Honor, this may be helpful.  
13          With regard to at least the repair charges, as I  
14          have already represented at the previous hearing in  
15          here, I concede that we will provide that. But to  
16          the degree that Ms. Clark is wanting an order on  
17          that, again, you know, we'll -- so we don't continue  
18          to come back for hearings like this, we will concede  
19          to that. I agree or don't object to a Motion to  
20          Dismiss with regard to that specific issue, being  
21          granted with leave for us to amend, same 15 days if  
22          that's okay with everybody.

23          THE COURT: Clarify the repair charges?

24          MR. GEOHAGAN: Right. Now, the other issue we  
25          vehemently object to and disagree, so I will let her



1 address that.

2 THE COURT: So it's going to be granted as to  
3 dismissal insofar as plaintiff will have 15 days to  
4 amend the respective complaints to allege what  
5 repair charges are at issue.

6 MS. CLARK: As well as the amounts for each  
7 line item.

8 THE COURT: Any objection to the amounts?

9 MR. GEOHAGAN: No, sir, Your Honor.

10 THE COURT: All right. We'll also include the  
11 amounts as far as the repair charges at issue.

12 MR. JAMESON: Judge, we would join on that as  
13 well in the Hawks case.

14 THE COURT: Okay. It will be granted.

15 MR. GEOHAGAN: So I will do that. Instead of  
16 in the Progressive order, which I don't even know --  
17 I don't know what the case number is, but anyway,  
18 there's one. With regard to the Progressive order,  
19 instead of saying that the plaintiffs just concede  
20 with regard to that, I will go ahead and do Motion  
21 to Dismiss granted with leave to amend on the part  
22 of the plaintiffs, 15 days to amend the complaint to  
23 that specific issue.

24 THE COURT: Okay. And then the last issue  
25 dealing with the motion for clarification, it deals

1 with --

2 MS. CLARK: Your Honor, this deals with the  
3 plaintiff's responsibility to tell State Farm what  
4 provisions of the contract have been breached at  
5 least generally. Right now we don't have that  
6 alleged, and I think that if that's added, that's  
7 helpful so that State Farm can prepare a defense in  
8 this case. The DCAs have pointed out that we are a  
9 fact-pleading jurisdiction, and that is so  
10 defendants can prepare a defense and present the  
11 case for trial for Your Honor, and so we would ask  
12 that that be added to the repair issue that are at  
13 issue.

14 THE COURT: What part of the complaint do you  
15 feel does not sufficiently allege what policy  
16 provision was breached?

17 MS. CLARK: If you take a look at paragraph 16.

18 THE COURT: Okay. Under Count One breach of  
19 contract?

20 MS. CLARK: Correct. It says, "State Farm has  
21 breached the policy/contract with Mr. Burns/Gunder  
22 by failing and refusing to pay for and/or reimburse  
23 Mr. Burns/Gunder for the repair of his damaged  
24 Toyota pursuant to the terms of Mr. Burns/Gunder's  
25 policy/contract with State Farm."

1           I don't have any place in the complaint that  
2           tells us what terms he's speaking of. There are  
3           references up in paragraph 11 that say with  
4           numerous -- the last, I guess, sentence. In fact,  
5           "State Farm failed and refused to pay for or  
6           reimburse the plaintiff for the repair charges  
7           associated with numerous repair procedures that were  
8           necessary and reasonable for purposes of bringing  
9           the damaged Toyota back to its pre-loss condition."

10           But State Farm believes it's incumbent on the  
11           plaintiff to identify what language of the policy is  
12           being breached. If we look at paragraph 10, there's  
13           also a reference in the last sentence, "The  
14           representative underestimated the amount necessary  
15           and reasonable and competitive in the marked area."  
16           That's a quote. But I don't know what the plaintiff  
17           is talking about. If he's talking about something  
18           in a language in our policy, I think it's important  
19           that he add that.

20           And it would be our request the Court enter an  
21           order directing the plaintiff to, quote or cite or  
22           reference the language of the policy that he  
23           believes has been breached. I mean, he is after all  
24           bringing a breach of contract claim against State  
25           Farm.

1 THE COURT: Okay. Thank you.

2 Your response, Mr. Geohagan?

3 MR. GEOHAGAN: Yes, sir, Your Honor. And,  
4 again, I would note that for whatever reason this  
5 wasn't raised before. This is a new one. I suspect  
6 there's going to be some new ones after this as  
7 well.

8 MS. CLARK: Really?

9 MR. GEOHAGAN: With regard to this, Your Honor,  
10 first of all, let me point out that in the Motions  
11 to Dismiss with regard to this issue as well as just  
12 a few moments ago, my respective counterpart was  
13 identifying those areas where there wasn't anything  
14 that talks about, as she put it, at least generally  
15 with regard to what's a breach with the contract.

16 Conspicuously not mentioned -- well, let me  
17 first say this. When you look at Count One -- and  
18 let me go ahead -- and, Your Honor, may I approach?

19 THE COURT: Sure.

20 MR. GEOHAGAN: This is, I believe, the Burns  
21 case.

22 MS. CLARK: This is Burns?

23 MR. GEOHAGAN: Yeah.

24 So I am using this one as an example because  
25 they're all -- for purposes of what we're arguing

1 about, they're all the same. But if you'll note --  
2 and this is in every civil lawsuit of course. When  
3 you get down to the counts, you go -- the first  
4 paragraph always realleges and incorporates the  
5 previous background and jurisdictional paragraphs,  
6 Your Honor, and allegations by reference into that  
7 count so that all elements are met.

8 You'll see paragraph 14 says, "Gunder realleges  
9 and incorporates herein by reference the allegations  
10 contained in paragraphs 1 through 13 above."

11 Now, if you'll look as part of 1 through 13  
12 above back to paragraph 8, which is not mentioned in  
13 the Motion to Dismiss, nor was it mentioned a few  
14 moments ago, it states, "At all times material  
15 hereto, Mr. Burns," you can replace that name with  
16 any of the others, by the way, "Gunder was/is a  
17 policyholder/insurer of State Farm. Pursuant to the  
18 policy/contract between Mr. Burns/Gunder and State  
19 Farm, Mr. Burns/Gunder agrees to pay a monetary  
20 premium to State Farm," that's one part of the  
21 contract, "in exchange," there's the consideration,  
22 "for State Farm providing automobile insurance and  
23 generally paying for, reimbursing Mr. Burns/Gunder  
24 for any repair charges that are necessary,  
25 reasonable and competitive in the market area for

1 purposes of repairing Mr. Burns/Gunder's vehicle if  
2 it is damaged as a result of a collision."

3 Your Honor, I would go ahead and submit very  
4 confidently that that right there is exactly what  
5 they're asking for short of -- and now let's kind of  
6 couple in and pull into what we were just arguing.  
7 We don't have the policy contract, so how in the  
8 world are we going to get the specific provision?

9 THE COURT: How do you quote specific policy  
10 language when you don't have the policy?

11 MR. GEOHAGAN: Exactly, Your Honor.

12 Now, the insureds in these situations, the  
13 customers of the repair shop, Your Honor, they have  
14 an understanding in good faith of what they believe  
15 the obligations are of the insurance company, in  
16 this instance State Farm, for purposes of repairing  
17 a vehicle as it relates to a collision claim. And  
18 that paragraph, paragraph 8 in all of these  
19 complaints is the representation of what is being  
20 breached in an automobile insurance policy, in this  
21 particular instance State Farm, Your Honor, because  
22 there are other aspects, many, to an automobile  
23 insurance policy.

24 This is where the breach is. This is,  
25 generally speaking, the provision that we are saying

1 is breached, Your Honor. And then furthermore --

2 THE COURT: That's as to the four cases in  
3 question, 1878, 2362, 2363 and 2470, you don't have  
4 any of those respective policies at this point in  
5 time in your possession?

6 MR. GEOHAGAN: No, sir, Your Honor.

7 MS. CLARK: Your Honor, also Marcus, because  
8 this argument, this final argument goes to Marcus,  
9 which is 2967.

10 MR. GEOHAGAN: Right.

11 THE COURT: 29 --

12 MS. CLARK: 67.

13 THE COURT: 67.

14 MS. CLARK: Argument three, motion for more  
15 definite statement includes Collision Concepts.

16 MR. GEOHAGAN: That's right.

17 THE COURT: Anything else, Mr. Geohagan?

18 MR. GEOHAGAN: Yes, sir, Your Honor. And  
19 further, Rule 1.110(B) is where -- may I approach,  
20 Your Honor?

21 THE COURT: Sure.

22 MR. GEOHAGAN: That's where, Your Honor, our  
23 direction for pleading in these matters comes from,  
24 in any civil matter for that matter.

25 Subsection B, claims for relief. "A pleading

1           which sets forth a claim for relief where an  
2           original claim, counterclaim, cross-claim or third  
3           party claim must state a cause of action and shall  
4           contain, one, number one, a short and plain  
5           statement of the grounds upon which the court's  
6           jurisdiction depends unless the court already has  
7           jurisdiction and the claim needs no new grounds of  
8           jurisdiction to support it."

9           So, again, the crucial language there is short  
10          and plain statement of the grounds upon which the  
11          court's jurisdiction depends.

12          "Number two, a short and plain statement of the  
13          ultimate facts showing that the pleader is entitled  
14          to relief."

15          And, "Number three, a demand for judgment for  
16          the relief to which the pleader deems herself or  
17          herself entitled."

18          Of course the pertinent language there for our  
19          purposes is number two, a short and plain statement  
20          of the ultimate facts showing that the pleader is  
21          entitled to relief. And, Your Honor, when they talk  
22          about ultimate facts, when you look at the case law,  
23          what they're in particular looking at is someone not  
24          just pleading conclusions of law, which of course  
25          you have to do as well. If you just do conclusions



1 of law, then you ain't there. You're not satisfying  
2 Rule 1.110(B). So you have to have something  
3 underneath the conclusions of law, Your Honor.

4 And there are two cases in particular. One --  
5 there was three, actually, that were cited by my  
6 respected counterpart for purposes of State Farm's  
7 Motion to Dismiss with regard to this particular  
8 subject.

9 One of them was a 1989 case or something like  
10 that. That's well before the pleadings and the  
11 manner in which the Florida Rules of Civil Procedure  
12 changed and its demeanor and attitude and openness  
13 and whatnot. So the other two I'm going to focus  
14 on, Your Honor.

15 And I think these, when you look at the  
16 background facts, look to and support our position  
17 in this case that we have sufficiently pled for  
18 purposes what part of the contract, what aspect of  
19 the contract has been breached.

20 The first one I want to provide to, Your Honor  
21 is Sunbeam Television Corp. versus Mitzell, 83 So.3d  
22 865. It's a January 2012 Third DCA case. May I  
23 approach, Your Honor?

24 THE COURT: Sure. Thank you.

25 MR. GEOHAGAN: Yes, sir.

1           Your Honor, again, this is one cited by State  
2           Farm in their motion and if you'll turn to the  
3           page 875. And I know that's going to be difficult  
4           because there's not -- let's see here. It's going  
5           to be one, two, three --

6           THE COURT: What page is it?

7           MR. GEOHAGAN: It's page 875, but it's like the  
8           fifth one from the back up because there's no  
9           other --

10          THE COURT: Fifth from the back?

11          MR. GEOHAGAN: Yes, sir. I am looking at a  
12          right-hand column, first full paragraph, starts with  
13          the word and the name, Mitzell.

14          THE COURT: Okay.

15          MR. GEOHAGAN: And if you will see there, Your  
16          Honor, it reads, "Mitzell also should not have been  
17          allowed to proceed on a claim that had not been pled  
18          in her complaint." Quote, "Litigants at the outset  
19          of a suit must be compelled to state their pleadings  
20          with sufficient particularity for a defense to be  
21          prepared." And then going beyond the citation  
22          there, "Thus, when a plaintiff pleads one claim but  
23          tries to prove another, it is error for a trial  
24          court to allow the plaintiffs to argue the unpled  
25          issue at trial."

1           Now, again, they're addressing this situation,  
2           and this is the case upon which State Farm is  
3           relying for purposes of this issue.

4           Now, if you'll go down further in that same  
5           column, Your Honor, skip over some of those  
6           citations, where it starts, "In this case..."

7           THE COURT: Okay.

8           MR. GEOHAGAN: It states, "In this case Mitzell  
9           alleged a pure age discrimination claim yet was  
10          allowed to try not just age but also a sex  
11          discrimination claim. This in itself requires  
12          reversal."

13          Then it goes on, skipping over the citation,  
14          "Reversing final judgment where plaintiff had  
15          alleged three specific acts of negligence but tried  
16          the case on a fourth alleged act that was never  
17          pled."

18          Skipping that citation and quotation there.  
19          Quote, "A judgment upon a matter entirely outside  
20          the issues made by the pleadings cannot stand and  
21          such a judgment is voidable on appeal," end quote.

22          Your Honor, what the cases are addressing in  
23          situations where you're failing to sufficiently  
24          plead ultimate facts are situations where it's  
25          completely void. That is absolutely not the case

1 under these circumstances. We have sufficiently  
2 pled what it is about the policy contract,  
3 particularly without having the contract in our  
4 possession, as to why it's breached.

5 And then the next case, Your Honor, the last  
6 case -- and, again, these are cases cited by State  
7 Farm in their Motion to Dismiss -- is the Deloitte  
8 and Touche -- or Touche -- I think it's Deloitte and  
9 Touche; that's how most people pronounce it --  
10 versus Gencor, Fifth DCA case, 2006, Your Honor.  
11 And may I approach?

12 THE COURT: Sure.

13 MR. GEOHAGAN: The citation is 929 So.2d 678 in  
14 that case. That Sunbeam case, by the way -- I gave  
15 you the citation.

16 Okay. Going back to Deloitte and Touche, this  
17 is another case that is cited and relied upon by  
18 State Farm with regard to this issue, Your Honor.  
19 And if you turn to the one, two, third page, and  
20 it's going to be --

21 THE COURT: Front or back?

22 MR. GEOHAGAN: No, from the front. I'm sorry,  
23 Your Honor.

24 THE COURT: Okay.

25 MR. GEOHAGAN: For purposes of the record, it's

1 page 681. Anyway, if you go to the right-hand  
2 column, Your Honor, it starts, "Although as Judge  
3 Farmer..."

4 Do you see that?

5 THE COURT: Uh-huh.

6 MR. GEOHAGAN: So it says, "Although as Judge  
7 Farmer has pointed out in NationsBank --" and I will  
8 omit the rest of that citation. "There is language  
9 in decisions in the Florida Supreme Court that  
10 appear to equivocate on the question whether  
11 Section --" it goes through this particular statute  
12 that they're relying upon for purposes of this case.  
13 Then you go down to the citations there, skipping  
14 over them. Then it goes on with regard to what  
15 they're for purposes of this particular case relying  
16 on. Section 552 of the restatement -- it's not  
17 restatement.

18 "Although commonly referred to as negligent  
19 misrepresentation, it's actually entitled  
20 Information Negligently Supplied For the Guidance of  
21 Others. Section 552 has several specific elements,  
22 almost none of which are properly addressed by the  
23 allegations of ultimate fact in the negligent  
24 misrepresentation count of Gencor's complaint. If  
25 Gencor had been held to properly plead the elements

1 of Section 552, our" -- I'm turning the page --  
2 "task in this case would have within considerably  
3 simplified."

4 Your Honor, I would suggest to you in that  
5 particular case, again, that's a situation where the  
6 plaintiff in that particular instance as far as the  
7 pleading duties are concerned are consistent with  
8 Florida Rule of Civil Procedure 1.110(B) were wholly  
9 void as compared to a situation such as ours, Your  
10 Honor, where, in fact, we do have a paragraph,  
11 again, that wasn't otherwise mentioned or addressed  
12 by State Farm, paragraph 8, that absolutely does, I  
13 would suggest to you, a fantastic job of identifying  
14 the area within the policy contract that we believe  
15 the breach occurred. And particularly short of,  
16 Your Honor, having the actual contract in our  
17 possession consistent with the cases that were cited  
18 previously, Your Honor.

19 So with regard to this particular issue, Your  
20 Honor, again, if, Your Honor were to grant this  
21 Motion to Dismiss, Your Honor, I would suggest that  
22 you would effectively close the doors to the justice  
23 system to a lot of insureds out there, my clients  
24 and others, because many people under these  
25 circumstances, whether you're talking about a policy

1 contract or some other situation, Your Honor,  
2 particularly where they don't have it in their  
3 possession, there is absolutely no way to do it.  
4 And if you can't get into the courthouse, then you  
5 may not even be able to get it to begin with to  
6 address specifically what it's in there.

7 Otherwise, yes, it does need to be in some  
8 fashion in good faith alleged. What about this  
9 contract are you saying was breached? Absolutely.  
10 And we did that in paragraph 8 sufficiently, Your  
11 Honor. And so, therefore, to that degree we would  
12 respectfully request this Court, Your Honor, deny  
13 State Farm's Motion to Dismiss with regard to this  
14 specific issue.

15 THE COURT: All right. Thank you.

16 Mrs. Clark?

17 MS. CLARK: Your Honor, with all due respect,  
18 by no means is State Farm trying to close the doors  
19 to the justice system to the plaintiff. That's  
20 absurd. We are simply asking with respect to all  
21 the cases that Mr. Geohagan raised -- and which he's  
22 conceded he did not do. He did not allege the  
23 repairs, line item. These cases speak to that.  
24 He's conceded, "I'm going to fix that."

25 I understand he doesn't have a copy of the

1 contract, but a contract is what forms this lawsuit.  
2 There is nothing prohibiting him from presuit  
3 requesting a copy of the contract, from getting it  
4 from the insured at the time. And to the extent he  
5 doesn't have it, you have already ruled on this, he  
6 can allege he doesn't have it. So the fact that  
7 he's saying that State Farm's case law does not  
8 support that he needs to plead what has been  
9 breached, the case law goes to you have got to put  
10 us on notice as the plaintiff what it is you're  
11 suing for so that we can prepare our defense.

12 Mr. Geohagan is -- he obviously doesn't have a  
13 copy on his clients' behalf of the complaint -- I  
14 mean of the contract. If he receives a copy of the  
15 contract through discovery, we would request that  
16 the Court require him to amend the complaint to  
17 allege what provisions have been breached by my  
18 client so that we can properly prepare a defense.  
19 But to the extent he's trying to say that the cases  
20 we have cited don't relate to a motion for more  
21 definite statement, I think that is completely  
22 without merit considering especially that he has  
23 conceded that he didn't allege the repairs,  
24 procedures and charges associated with those  
25 procedures.



1           To the extent -- he stopped reading at one  
2 point in the Sunbeam case where I had mentioned this  
3 earlier, that the Court, the Fifth District Court of  
4 Appeal -- and there's nothing in conflict with  
5 that -- our jurisdiction, it merely points out that  
6 we are a fact-pleading jurisdiction. We do that so  
7 defendants can get ready to defend themselves.

8           So I would request that the Court require  
9 plaintiff to, as soon as he gets a copy of the  
10 contract upon which he is suing, to amend the  
11 complaint to identify what allegations of the  
12 contract -- or, I'm sorry, what provisions of the  
13 contract State Farm has not complied with.

14           THE COURT: What's your position on that  
15 regarding future amendment?

16           MR. GEOHAGAN: Your Honor, number one, that's  
17 not right before the Court at this point in time.

18           Number two, again, we stand firm that we have  
19 already -- if you look at paragraph 8.

20           THE COURT: That could always be re-raised down  
21 the road obviously as the discovery process ensues.

22           MR. GEOHAGAN: Yes, sir.

23           MS. CLARK: I think it is ripe, though, to the  
24 extent --

25           MR. GEOHAGAN: Well, let me finish what I was

1 saying to him.

2 MS. CLARK: Yeah, go ahead.

3 MR. GEOHAGAN: You stepped in. Your Honor,  
4 with regard to that -- and I just lost my train of  
5 thought here.

6 THE COURT: Let me just ask this.

7 MR. GEOHAGAN: Yes.

8 THE COURT: It's not entirely ripe that in,  
9 once again, the plaintiff doesn't have the  
10 contracts.

11 MR. GEOHAGAN: Right. Exactly. I absolutely  
12 would -- that's why I said that to begin with, Your  
13 Honor.

14 But with regard to what we put them on notice  
15 on, Your Honor -- again, now, I don't think they'll  
16 dispute this -- they write these contracts. Okay.  
17 This is not your situation where you want Joe to mow  
18 your lawn and he's a buddy of yours and the two of  
19 y'all go back and forth put together a contract.  
20 These policy contracts are all prepared. There are  
21 no negotiations with regard to the language in these  
22 contracts. State Farm knows the language of their  
23 contract.

24 If paragraph 8 is not sufficient notice of what  
25 we're talking about, then nothing is. I mean,

1 otherwise it's just some futile exercise to make us  
2 come back into court and put down specifically what  
3 it is, and that is not requirements of the Florida  
4 pleading system. Yes, it is fact-based. Absolutely  
5 acknowledge that, Your Honor. But it doesn't mean  
6 that it's detail-based. It's absolutely not that  
7 way, and there's no case law to support that.

8 You plead ultimate facts, not just legal  
9 conclusions. We have done that, Your Honor. But  
10 there is absolutely no requirement that we have to  
11 put together the entire case in the complaint prior  
12 to coming into the court and the court entertaining  
13 it, Your Honor. And I would, again, you know,  
14 submit to Your Honor that it's for whatever this is  
15 a new argument, and I expect there's going to be  
16 some different argument. And the only way I bring  
17 that up is because these arguments don't help them  
18 with the merits of the case. We have had -- I don't  
19 even know how many cases with State Farm, and all of  
20 a sudden now they can't do the case because we  
21 haven't given them the specific provision?  
22 Practically speaking, that is disingenuous.

23 MS. CLARK: Your Honor.

24 MR. GEOHAGAN: In this particular case --

25 THE COURT: I will give you a chance.

1 MR. GEOHAGAN: In this particular instance,  
2 Your Honor, they are put on notice. And, again, us  
3 even talking about it and them actually saying with  
4 a straight face that "We don't know what to do with  
5 this case because you haven't give us a specific  
6 provision," I would submit to this Court confidently  
7 is disingenuous. It's just another way for us to  
8 come in here and spend some more money to address  
9 another issue, and I expect there will be some new  
10 ones just like it later on.

11 THE COURT: All right. Ms. Clark.

12 MS. CLARK: Your Honor, we're on the four  
13 corners of the complaint. I am appalled that a  
14 colleague of mine would call me disingenuous.

15 MR. GEOHAGAN: I didn't call you disingenuous.  
16 I said it's disingenuous --

17 THE COURT: Mr. Geohagan.

18 MS. CLARK: Your Honor.

19 THE COURT: Go ahead.

20 MS. CLARK: State Farm stands on its position,  
21 the arguments that I have raised previously, and we  
22 would request that you require the plaintiff to  
23 amend the complaint to identify what contract,  
24 albeit written by us, they are suing State Farm for  
25 breaching. What part of the contract has been

1           breached?

2                   THE COURT:   Okay.   Thank you.

3                   Counsel, anything for the record on behalf of  
4           your client?

5                   MR. JAMESON:   No, Your Honor.

6                   THE COURT:   Okay.   The Court notes the  
7           following.   Each of the respective complaints in the  
8           cases before the Court, which are for the record,  
9           Case Number ending 1878, Gunder v State Farm; 2362,  
10          Gunder v State Farm; 2363, Gunder v State Farm;  
11          2470, Gunder v State Farm; and 2967, Collision  
12          Concepts v State Farm, each paragraph 8 of the  
13          respective complaints has language which is then  
14          incorporated into the respective breach of contract  
15          count.   And paragraph 8 and later on incorporated  
16          into the breach of contract count makes it more than  
17          clear enough that this matter that is being alleged  
18          is a breach of contract matter wherein an insured  
19          had entered into a contract with State Farm.

20                   That contract obligated State Farm to provide  
21          automobile insurance in exchange for a monetary  
22          premium, that ultimately State Farm had a duty to go  
23          ahead and pay for any repair charges that were  
24          necessary, reasonable and competitive in the market  
25          area.   And based on paragraph 8, it is clear enough

1 at this point in time that there's an allegation  
2 that State Farm has, in fact, breached that duty and  
3 that this is a breach of contract claim involving a  
4 failure of State Farm to go ahead and pay out  
5 regarding the duty to pay on repair charges.

6 I note that -- I understand Ms. Clark's  
7 position that the more detailed and the more  
8 definite a statement the defense has, the more  
9 they're able to prepare a defense and also to narrow  
10 the issue for trial and so forth; but at the same  
11 time, the flip side is that the plaintiffs do not  
12 have the respective policies or contracts in their  
13 hand at this point in time. It's impossible for  
14 them to quote actual contract language in the  
15 complaints because they don't have the -- they don't  
16 have the contracts or the policies in their hand.  
17 As such, there is at the very least a clear enough  
18 statement of what is alleged pursuant to paragraph 8  
19 and incorporated into the breach of contract counts.

20 Furthermore, Florida Rule of Civil Procedure  
21 1.110(B) requires plaintiffs to plead a short and  
22 plain statement of the ultimate facts showing that  
23 the pleader is entitled to relief. It doesn't say a  
24 short and ultra-detailed statement or short and  
25 precise statement but rather a short and plain

1 statement.

2 At this point in time, the fact is plaintiffs  
3 don't have the contract or the policy in hand. They  
4 cannot quote actual policy language. Paragraph 8  
5 incorporated it into the respective breach of  
6 contract count. It is short and plain enough for  
7 this court. So the motion for a more definitive  
8 statement is going to be denied at this point in  
9 time.

10 MS. CLARK: With respect to the policy language  
11 only; right?

12 THE COURT: Yes.

13 MS. CLARK: Okay.

14 MR. GEOHAGAN: And also the Motion to Dismiss  
15 with regard to the other State Farm claims, it would  
16 be dismissed -- I'm sorry, it would be denied with  
17 regard to the specific policy language issue that we  
18 just addressed?

19 THE COURT: Correct.

20 MR. GEOHAGAN: Okay.

21 THE COURT: Mr. Geohagan, can you provide me an  
22 order on this second issue also?

23 MR. GEOHAGAN: Yes, sir, Your Honor.

24 MS. CLARK: May I ask to see the order before  
25 it's being submitted?

1 MR. GEOHAGAN: Oh, absolutely. I can't do that  
2 anyway.

3 THE COURT: All right. Well, I believe that is  
4 it then. Thank you.

5 MS. CLARK: Thank you, Your Honor.

6 MR. GEOHAGAN: Your Honor, just so we're clear,  
7 I am preparing the order with regard to all four  
8 that we addressed here today; correct?

9 THE COURT: Right.

10 MR. GEOHAGAN: Yes, sir.

11 THE COURT: As far as cases are concerned?

12 MR. GEOHAGAN: Well, not just cases but all the  
13 issues too?

14 THE COURT: All the issues, yes. We should  
15 probably go over them real quick so we're real  
16 clear. First issue we dealt with was the dismissal  
17 pursuant to lack of standing. That was denied.

18 The second issue we dealt with was the failure  
19 to attach the policy.

20 MR. GEOHAGAN: That was --

21 MS. CLARK: Granted.

22 MR. GEOHAGAN: -- granted with leave to amend.

23 THE COURT: Right. That was granted with leave  
24 to amend. And we talked about --

25 MS. CLARK: Fifteen days.



1 THE COURT: We talked about 15 days; is that  
2 right?

3 MS. CLARK: Right.

4 THE COURT: Fifteen days to amend.

5 MR. GEOHAGAN: Yes, sir, Your Honor.

6 THE COURT: To include the language of  
7 quote-unquote that essentially the plaintiffs did  
8 not have the policy/contract in their possession.

9 MR. GEOHAGAN: Yes, sir.

10 THE COURT: Then the third issue we dealt with  
11 motion to clarify quote-unquote what are the repair  
12 charges specifically as far as monetary issues are  
13 concerned. I believe that was granted.

14 MS. CLARK: The operations and then the  
15 respective charges for each operation.

16 THE COURT: I believe that was granted --

17 MS. CLARK: Right.

18 THE COURT: -- to the extent that plaintiffs  
19 were to have 15 days to amend the respective  
20 complaints. We all agree on that?

21 MR. GEOHAGAN: Yes, sir, Your Honor.

22 MS. CLARK: Yes, Your Honor.

23 MR. JAMESON: Yes, Your Honor.

24 THE COURT: And, lastly, last but not least,  
25 was the Motion to Dismiss pursuant -- actually,

1 motion for more definitive statement. That has been  
2 denied at this time.

3 MR. GEOHAGAN: Well --

4 MS. CLARK: With respect to the policy  
5 language.

6 THE COURT: With respect to policy language.

7 MS. CLARK: Paragraph 8.

8 MR. GEOHAGAN: Right, Your Honor. It was also  
9 motion for more definitive statement with regard to  
10 Collision Concepts, but it was a part of their  
11 Motion to Dismiss with regard to the State Farm  
12 cases, if I'm not mistaken.

13 MS. CLARK: It's Motion to Dismiss and for  
14 alternative statement, more definite statement.

15 MR. GEOHAGAN: Right. But it does include  
16 Motion to Dismiss, so the motion for more definitive  
17 statement and the Motion to Dismiss would be denied  
18 with regard to that specific issue.

19 THE COURT: Correct.

20 MS. CLARK: Well, it wasn't move to dismiss for  
21 failure to state a policy provision. It was just a  
22 more definite statement.

23 THE COURT: It was a motion for a more  
24 definitive statement.

25 MR. GEOHAGAN: In all of them?

1 MS. CLARK: Right.

2 MR. GEOHAGAN: Okay.

3 THE COURT: Okay.

4 MS. CLARK: We can look at the motions.

5 THE COURT: They're just moving for more  
6 definitive statement. It wasn't a Motion to  
7 Dismiss.

8 MS. CLARK: Correct.

9 MR. JAMESON: Judge, one more thing. Not to  
10 confuse anything. The August order we actually had  
11 that Mr. Geohagan and I, I guess, agreed to on it,  
12 was that the power of attorney wasn't actually  
13 attached to our complaint originally in the Hawks  
14 case, and so that was just -- I kind of wanted to  
15 just clarify that that's thrown in there with his  
16 leave to amend.

17 MR. GEOHAGAN: Yes, sir.

18 THE COURT: Take care of that.

19 MR. GEOHAGAN: Yes, sir.

20 THE COURT: All right. Stand in recess then.

21 In future cases, Mr. Geohagan, on the actual as  
22 personal representative of the grantor and so forth,  
23 you're including that language in the caption as  
24 well?

25 MR. GEOHAGAN: Yes, sir, that's what I have

1           been doing, continuing to do that.

2           THE COURT: It certainly makes it cleaner. I  
3           don't believe it's necessary, but it makes it  
4           cleaner.

5           MR. GEOHAGAN: Right.

6           MS. CLARK: Thank you, Your Honor, for your  
7           time.

8           THE COURT: Ms. Clark, thank you.

9           MR. JAMESON: Thank you, Your Honor.

10          THE COURT: Thank you.

11          MS. CLARK: I need that transcript.

12                   (End of Proceedings at 2:18 p.m.)

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CERTIFICATE OF REPORTER

STATE OF FLORIDA            )  
COUNTY OF POLK            )

I, Tami Cline, Registered Merit Reporter,  
Certified Realtime Reporter, and Florida Professional  
Reporter, do hereby certify that I was authorized to and  
did report the foregoing proceedings and evidence in the  
captioned case, and that the transcript, pages 1  
through 61 is a true and correct transcription of my  
stenographic notes.

Dated this 12/27/12, at Lakeland, Polk  
County, Florida.

Tami Cline  
Tami Cline, RMR, CRR, FPR



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