

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION

ESTATE OF GERALDINE F. JENNINGS,
ROBERT J. JENNINGS,
CHERYL FAZO and
KIM S. JENNINGS,

Plaintiffs,

v.

Case No: 2:19-cv-00072-FtM-38NPM

GULFSHORE PRIVATE HOME CARE, LLC,

Defendant,

_____ /

GULFSHORE PRIVATE HOME CARE, LLC,

Third-Party Plaintiff

v.

CRIS-CAROL SAMUELS,

Third-Party Defendant.

_____ /

**GULFSHORE PRIVATE HOME CARE, LLC'S MOTION IN LIMINE TO EXCLUDE
THE FLORIDA TRAFFIC CRASH REPORT AND RELATED STATEMENTS FROM
EVIDENCE**

COMES NOW, Defendant, GULFSHORE PRIVATE HOME CARE, LLC, by and through its undersigned counsel and files its Motion in Limine to Exclude the Florida Traffic Crash Report and Relate Statements from Evidence, and as good cause in support thereof, Defendant would show:

1. Defendant anticipates that Plaintiff will attempt to enter the Florida Traffic Crash Report and/or statements made by occupants of the Cris-Carol Samuels' vehicle into evidence at trial.

2. The Florida Traffic Crash Report and statements made during the investigation should be excluded as hearsay.
3. Statements made by CRIS-CAROL SAMUELS and nonparty occupant Antoinette Janich are inadmissible pursuant to Florida Statute § 316.066(4). The actual traffic crash report is similarly inadmissible.

WHEREFORE, Defendant, GULFSHORE PRIVATE HOME CARE, LLC, respectfully requests that this Honorable Court enter an Order excluding the Florida Traffic Crash Report and related statements from evidence.

CERTIFICATE OF CONFERRAL

The undersigned counsel certifies that in compliance with Local Rule 3.01(g), prior to the filing of this motion the undersigned counsel conferred with opposing counsel regarding the relief sought by this motion and no agreement was reached as the relief sought.

INCORPORATED MEMORANDUM OF LAW

Defendant GULFSHORE PRIVATE HOME CARE, LLC, anticipates that Plaintiff will attempt to either admit the Florida Traffic Crash Report into evidence, or attempt to read the statements of CRIS-CAROL SAMUELS or Antoinette Janich into evidence. For the reasons set forth below, neither the report nor statements made during the investigation are admissible.

I. Facts

Plaintiff alleges that GERALDINE F. JENNINGS was killed when a car driven by CRIS-CAROL SAMUELS left the roadway and struck her while she was on the sidewalk. Ms. Antionette Janich was a passenger in the vehicle at the time of the crash. *See* Amended Complaint. Florida Highway Patrol investigated the accident and completed a report, which was attached as an Exhibit to the Amended Complaint. *Id.* During the investigation, the

investigating Trooper took recorded statements from SAMUELS and Janich. Plaintiff is not bringing a claim against SAMUELS.

II. Argument

1. The report and the statements of SAMUELS and Janich are hearsay.

“Hearsay” means a statement that: (1) the declarant does not make while testifying at the current trial or hearing; and (2) a party offers in evidence to prove the truth of the matter asserted in the statement.” Fed.R.Evid. 801. Hearsay is generally not admissible. Fed.R.Evid. 802. The statements made by SAMUELS and Janich contained in the report are hearsay within hearsay. Fed.R.Evid. 805. The statement by SAMUELS is not an opposing-party statement contemplated by Rule 801 because Plaintiff has made no claim against SAMUELS.

2. The report and statements of SAMUELS and Janich are privileged by Florida law.

Florida Statute § 316.066(4) provides:

Except as specified in this subsection, each crash report made by a person involved in a crash and any statement made by such person to a law enforcement officer for the purpose of completing a crash report required by this section shall be without prejudice to the individual so reporting. Such report or statement may not be used as evidence in any trial, civil or criminal. However, subject to the applicable rules of evidence, a law enforcement officer at a criminal trial may testify as to any statement made to the officer by the person involved in the crash if that person’s privilege against self-incrimination is not violated. The results of breath, urine, and blood tests administered as provided in s. 316.1932 or s. 316.1933 are not confidential and are admissible into evidence in accordance with the provisions of s. 316.1934(2).

SAMUELS and Janich each provided a recorded statement to the investigating officer in furtherance of the investigation. Accordingly, the statements are inadmissible pursuant to Florida law. See Anderson v. Mitchell, 2019 Fla. App. Lexis 5330 (Fla. 2d DCA 2019)(“[316.066(4)] is a law of admissibility that precludes the use of these statements at

trial.”); Nelson v. Department of Highway Safety & Motor Vehicles, 757 So. 2d 1264 (Fla. 3d DCA 2000)(“The statute [316.066] ‘prohibits the use of the report or statements as evidence in any trial, civil or criminal.’”).

The accident report and transcripts of interviews performed by the investigating officer during his crash investigation should be excluded from use during trial.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on July 2, 2020 a true and correct copy of the foregoing has been furnished via email to **Joel Ewusiak, Esquire** (local attorney) (joel@ewusiaklaw.com), EWUSIAK LAW, P.A., 6601 Memorial Highway, Suite 311, Tampa, Florida 33615 and **Eddi Z. Zyko, Esquire** (*pro hac vice*) (eddizyko@me.com), 120 Fenn Road, Middlebury, Connecticut 06762, **Anna D. Torres, Esquire**, (Eservice@torresvictor.com), TORRESVICTOR, P O Box 2849, West Palm Beach, FL 33402, and **John Kozak, Esquire**, (john.kozak@csklegal.com; kristal.saladin@csklegal.com), COLE, SCOTT & KISSANE, 4301 West Boy Scout Blvd., Suite 400, Tampa, Fl 33607.

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