

IN THE CIRCUIT COURT OF THE
NINTH JUDICIAL CIRCUIT, IN AND
FOR ORANGE COUNTY, FLORIDA

CASE NOS.: 2018-CA-12249-O
2018-CA-12252-O
2018-CA-12256-O
2018-CA-12259-O
2018-CA-12311-O

STATE FARM MUTUAL
AUTOMOBILE INSURANCE COMPANY,

Petitioner,

v.

ALTAMONTE SPRINGS DIAGNOSTIC IMAGING,
INC., d/b/a PREMIER MEDICAL IMAGING,
as assignee of Ovidio Arnaiz,

Respondent.

STATE FARM MUTUAL
AUTOMOBILE INSURANCE COMPANY,

Petitioner,

v.

EMERGENCY MEDICAL ASSOCIATES OF
FLORIDA, LLC, as assignee of Margaret Meek,

Respondent.

STATE FARM MUTUAL
AUTOMOBILE INSURANCE COMPANY,

Petitioner,

v.

MITCHELL R. GREENBERG, DC, INC.
D/B/A INJURY TREATMENT SOLUTIONS
AND/OR ALL BREVARD CHIRO/MED,
as assignee of Trever Nutting,

Respondent.

STATE FARM MUTUAL AUTOMOBILE
INSURANCE COMPANY,

Petitioner,

v.

FLORIDA EMERGENCY PHYSICIANS
KANG & ASSOCIATES, M.D., P.A.,
as assignee of Brenda Bradley,

Respondent.

STATE FARM MUTUAL AUTOMOBILE
INSURANCE COMPANY,

Petitioner,

v.

FLORIDA HOSPITAL MEDICAL
CENTER, as assignee of Nitza Jimenez,

Respondent.

**ORDER DISMISSING PETITIONS FOR WRIT OF CERTIORARI WITHOUT
PREJUDICE AND DIRECTING CLERK TO CLOSE CASES**

THIS MATTER came before the Court for consideration of the Petitions for Writ of Certiorari filed in 2018-CA-12249-O, 2018-CA-12252-O, 2018-CA-12256-O, 2018-CA-12259-O, and 2018-CA-12311-O;¹ the Motions to Dismiss Petitions as Premature filed in these cases; and the Responses to the Motions to Dismiss filed in these cases.

The Court finds as follows:

¹ These Petitions were reassigned to 2018 Appellate Panel G, the appellate panel for 2018-CA-12249-O, in the Court's July 26, 2019 Order of Reassignment so that they travel together throughout the appellate process. *See J.M.B. v. State*, 776 So. 2d 353, 354 (Fla. 1st DCA 2001) (consolidation for purposes of traveling together "simply means that the cases are assigned to the same panel of judges at the same time. This is employed when the cases are factually or legally related in some fashion but they remain separate for records and briefing, and is utilized to maximize this court's judicial resources and ensure consistent outcomes.").

State Farm Mutual Automobile Insurance Company (State Farm), the Petitioner in all five Petitions, seeks certiorari review of trial court orders requiring it to submit to the court certain documents alleged to be privileged for an in camera inspection. Notably, the orders in these cases did not require production of the documents to the opposing party, just an in camera inspection. State Farm states that it is seeking certiorari review in an “abundance of caution” and “to avoid a later argument that the point of entry for such a challenge has passed,” as the trial court “expressly stated that it has not ruled that there has been any waiver of the attorney-client privilege by State Farm.” State Farm suggests that in the alternative to granting certiorari, this Court “should state expressly that this petition is premature,” and that State Farm may seek to protect its attorney-client privilege “at a later date, if and when the trial court squarely addresses the issue.”

According to Respondents’ Motions to Dismiss Petitions as Premature, dismissal of the instant Petitions as premature is warranted under Florida law. *See Cape Canaveral Hosp., Inc. v. Leal*, 917 So. 2d 336, 340 (Fla. 5th DCA 2005) (certiorari review of order that requires submission of documents to trial court for in camera inspection is premature if no production to opposing party has been ordered). Respondents also point out that the trial court subsequently entered orders ruling that the documents must be produced, and that State Farm is presently seeking certiorari review of those orders in 2019-CA-423-O, 2019-CA-424-O, 2019-CA-425-O, 2019-CA-426-O, and 2019-CA-428-O. State Farm in its Responses to the Motions to Dismiss argues against dismissal, but in the alternative requests that any dismissal “should be without prejudice.” State Farm acknowledges that it has filed petitions in 2019-CA-423-O, 2019-CA-424-O, 2019-CA-425-O, 2019-CA-426-O, and 2019-CA-428-O with respect to the trial court’s subsequent rulings ordering production of the documents alleged to be privileged.

The Court grants the Motions to Dismiss Petitions as Premature and dismisses the Petitions filed in 2018-CA-12249-O, 2018-CA-12252-O, 2018-CA-12256-O, 2018-CA-12259-O, and 2018-CA-12311-O as premature, as they seek certiorari review of trial court orders that merely ordered an in camera review of certain documents and did not order production of those documents to the opposing party. As indicated, under Florida law, certiorari is not available in these circumstances. *Leal*, 917 So. 2d at 340. However, the Court's dismissal is without prejudice to State Farm asserting its attorney-client privilege arguments with respect to the trial court's subsequent rulings ordering the production of the documents. As also indicated, State Farm is presently seeking certiorari review of those subsequent rulings in 2019-CA-423-O, 2019-CA-424-O, 2019-CA-425-O, 2019-CA-426-O, and 2019-CA-428-O.

Accordingly, it is **ORDERED AND ADJUDGED** as follows:

1. The Motions to Dismiss Petitions as Premature filed in 2018-CA-12249-O, 2018-CA-12252-O, 2018-CA-12256-O, 2018-CA-12259-O, and 2018-CA-12311-O are **GRANTED**.
2. The Petitions for Writ of Certiorari filed in 2018-CA-12249-O, 2018-CA-12252-O, 2018-CA-12256-O, 2018-CA-12259-O, and 2018-CA-12311-O are **DISMISSED WITHOUT PREJUDICE**.
3. The Motions for Appellate Attorney's Fees filed by Respondents in 2018-CA-12249-O, 2018-CA-12252-O, 2018-CA-12256-O, 2018-CA-12259-O, and 2018-CA-12311-O pursuant to section 627.428, Florida Statutes are **CONDITIONALLY GRANTED**, in an amount to be determined below and subject to the ultimate success of Respondents in the underlying cases.

4. The Clerk of the Court is directed to **CLOSE** 2018-CA-12249-O, 2018-CA-12252-O, 2018-CA-12256-O, 2018-CA-12259-O, and 2018-CA-12311-O.

DONE AND ORDERED in Chambers, at Orlando, Orange County, Florida, on this 12th day of Sept, 2019.

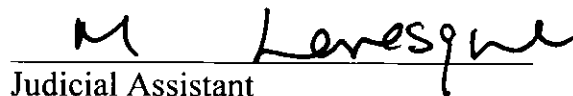


JULIE H. O'KANE
Presiding Circuit Judge

DOHERTY and APTE, J.J., concur.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Order was furnished on this 13th day of Sept, 2019 to: **Joseph H. Lang, Jr., Esquire** and **Paul L. Nettleton, Esquire**, Carlton Fields Jordan Burt, P.A., P. O. Box 3239, Tampa, Florida 33601-3239 at jlang@carltonfields.com and pnettleton@carltonfields.com; **Chad A. Barr, Esquire**, 986 S. Douglas Avenue, Suite 100, Altamonte Springs, Florida 32714 at chad@chadbarrlaw.com; **David B. Alexander, Esquire**, Bradford Cederberg, P.A., 2900 E. Robinson Street, Orlando, Florida 32803 at dba.service@bradfordlaw.com; **Daniel S. Kuczler, Esquire**, **Abbi Freifeld Carr, Esquire**, and **Veresa Jones Adams, Esquire**, ROIG Lawyers, 1255 S. Military Trail, Suite 100, Deerfield Beach, Florida 33442 at Pleadings@RoigLawyers.com, dkuczler@roiglawayers.com, ACarr@Roiglawayers.com and VAdams@Roiglawayers.com.



Judicial Assistant