DISTRICT COURT OF APPEAL OF FLORIDA
SECOND DISTRICT

ALBERTA S. ELLISON,

Appellant,

v.

RANDY WILLOUGHBY,

Appellee.

No. 2D19-1961

June 11, 2021

Appeal from the Circuit Court for Hillsborough County; Ralph C. Stoddard, Judge.

Paul L. Nettleton of Carlton Fields, P.A., Miami; and Christine R. Davis of Carlton Fields, P.A., Tallahassee, for Appellant.

Brent Steinberg, Brandon Cathey, and Daniel L. Greene of Swope, Rodante P.A., Tampa, for Appellee.

LABRIT, Judge.

How can a trial court apply a statute meant to prevent plaintiff windfalls when higher court precedent authorizes double recovery

in all but the "perfect" case? It can't. Because we too are bound by higher precedent, we affirm the trial court's decision denying the defendant's request to set off $4 million in settlement proceeds against the $30 million jury verdict. And we certify a question of great public importance. We also affirm the four other issues raised on appeal without discussion.

Factual and Procedural Background

Mr. Willoughby sustained serious injuries when a truck driven by Mr. Ellison T-boned an automobile in which Mr. Willoughby was a passenger. Mr. Willoughby sued Mr. Ellison for negligence and Mrs. Ellison—the co-owner of Mr. Ellison's truck—under vicarious liability principles. In the same complaint, Mr. Willoughby asserted claims against his uninsured motorist (UM) insurer, 21st Century Centennial Insurance Company, for UM benefits and bad faith damages pursuant to sections 624.155 and 627.727(10), Florida Statutes (2013).

Two years later, Mr. Willoughby and 21st Century executed a settlement agreement and agreed to release each other from all claims "which were or could have been asserted in the [l]awsuit, including all claims related to the [a]ccident or the [p]olicy." As

consideration, 21st Century agreed to pay $4 million to Mr. Willoughby and his counsel.[1] The settlement agreement recites that the $1.735 million payable to Mr. Willoughby "constituted damages on account of personal injuries or sickness, within the meaning of [s]ection 104(a)(2) of the Internal Revenue Code," but it does not otherwise differentiate categories of damage to which the settlement funds are attributable. No other person, firm, or corporation was released by the settlement agreement, and Mr. Willoughby reserved all claims and causes of action against the Ellisons. Shortly after the settlement agreement was executed, Mr. Willoughby dismissed his claims against 21st Century with prejudice and dropped his negligence claim against Mr. Ellison.

After four more years of litigation, Mrs. Ellison admitted liability and stipulated that Mr. Willoughby's past medical expenses were $147,020. The case then went to trial to determine Mr. Willoughby's remaining damages. After a week-long trial, a jury

[1] 21st Century agreed to remit $2.265 million to the trust account of Mr. Willoughby's counsel upon execution of the settlement agreement and to pay the balance of the settlement proceeds to Mr. Willoughby in periodic payments over a number of years.

awarded Mr. Willoughby a total of $30,101,599 for future medical expenses, past and future lost earnings, and past and future pain and suffering.

Mrs. Ellison filed posttrial motions in which she sought various relief, including a $4 million setoff attributable to the 21st Century settlement. Although she apparently conceded that Florida case law did not permit a setoff for $10,000 in UM benefits (the policy limits of the 21st Century UM policy), Mrs. Ellison argued that the remaining $3.99 million was subject to setoff under section 768.76, Florida Statutes (2019), as a collateral source.

At the hearing on Mrs. Ellison's posttrial motions, the parties acknowledged that the question of whether the remaining $3.99 million was subject to setoff was one of first impression. Mrs. Ellison argued that the 21st Century settlement compensated Mr. Willoughby for economic damages, which were included within the amounts awarded by the jury verdict, and that the settlement amount should be set off to prevent a windfall to Mr. Willoughby. Mr. Willoughby maintained that the settlement amount was not subject to setoff because (1) 21st Century and Mrs. Ellison were not joint tortfeasors and (2) UM settlement awards are generally not

considered collateral sources. The trial court denied Mrs. Ellison's motion for setoff, reasoning that "[t]he law is clear that an underinsured tortfeasor is not entitled to a setoff for payments made by plaintiff's own UM insurer" and relying on *Hughes v. Enterprise Leasing Co.*, 831 So. 2d 1240 (Fla. 1st DCA 2002); *Terri Van Winkle, P.A. v. Johnston*, 813 So. 2d 1065 (Fla. 1st DCA 2002); *Hernandez v. Gisonni*, 657 So. 2d 33 (Fla. 4th DCA 1995); *Economy Fire & Casualty Co. v. Obenland*, 629 So. 2d 265 (Fla. 2d DCA 1993); and *Respess v. Carter*, 585 So. 2d 987 (Fla. 5th DCA 1991).

Analysis

A trial court's ruling on a motion to determine setoff is reviewed de novo. *See, e.g.*, *Addison Constr. Corp. v. Vecellio*, 240 So. 3d 757, 764 (Fla. 4th DCA 2018) (citing *D'Angelo v. Fitzmaurice*, 863 So. 2d 311, 314 (Fla. 2003)). Mrs. Ellison argues that the trial court erred by denying her motion to set off the 21st Century settlement proceeds under sections 768.041(2) and 768.76(1). We disagree.

1. Setoff under Section 768.041(2)

We first address Mr. Willoughby's argument that Mrs. Ellison did not preserve a claim for setoff under section 768.041(2).

Generally, "[a]n issue that has not been framed by the pleadings, noticed for hearing, or litigated by the parties is not a proper issue for the court's determination." *Derouin v. Universal Am. Mortg. Co., LLC*, 254 So. 3d 595, 601 (Fla. 2d DCA 2018). However, "[a] party need not cite the exact cases on point to the trial court in order to preserve a claim, so long as its objection is sufficiently precise that it fairly apprised the trial court of the relief sought and the grounds therefor." *Lincare Holdings Inc. v. Ford*, 307 So. 3d 905, 912 (Fla. 2d DCA 2020) (cleaned up).

While Mrs. Ellison never specifically cited section 768.041(2) below, this issue was thoroughly litigated in the trial court, and both the parties and the trial court relied on case law analyzing setoff of UM settlements under both sections 768.041(2) and 768.76(1). *See, e.g.*, *Hughes*, 831 So. 2d at 1240–41 (analyzing setoff under sections 768.041(2) and 768.76(1)); *Terri Van Winkle, P.A.*, 813 So. 2d at 1066–67 (same); *Respess*, 585 So. 2d at 989 (analyzing setoff under the collateral source rule and section 768.041). Accordingly, the propriety of setoff under section 768.041(2) is preserved for review.

Turning to the merits, "[t]he purpose of [section 768.041(2)] is to prevent a windfall to a plaintiff by way of double recovery." *Addison*, 240 So. 3d at 764. Section 768.041(2) requires setoff "if any defendant shows . . . that the plaintiff . . . has delivered a release or covenant not to sue to any person, firm, or corporation *in partial satisfaction of the damages sued for*." § 768.041(2) (emphasis added). This text is plain and unambiguous, and if we were writing on a blank slate, the analysis would end here. We would hold that section 768.041(2) required the trial court to set off the 21st Century settlement proceeds because Mrs. Ellison "show[ed] that" Mr. Willoughby "delivered a release" to 21st Century in "partial satisfaction" of the damages he "sued for" in this lawsuit.

However, our supreme court has declared that section 768.041(2) "presupposes the existence of multiple defendants *jointly and severally liable for the same damages*." *D'Angelo*, 863 So. 2d at 314 (emphasis added) (citing *Wells v. Tallahassee Mem'l Reg'l Med. Ctr., Inc.*, 659 So. 2d 249, 253 (Fla. 1995)). The *D'Angelo* court explained that "the applicability of the setoff statutes is predicated on the existence of ***other tortfeasors who are liable for the same injury as the settling party***." *Id.* at 316–17 (emphasis added)

(quoting *Schnepel v. Gouty*, 795 So. 2d 959, 965 (Fla. 2001)). The district courts have followed this precedent. For instance, the Third and Fourth Districts have held that if "settlement funds are applicable to a claim asserted only against the settling co-defendant [sic], the non-settling [sic] co-defendants [sic] are not eligible for a set-off [sic] in the amount of the settlement." *Escadote I Corp. v. Ocean Three Ltd. P'ship*, 211 So. 3d 1059, 1062 (Fla. 3d DCA 2016); *accord Addison*, 240 So. 3d at 764.

Mr. Willoughby argues that the 21st Century settlement funds applied only to the claims he asserted against 21st Century (breach of contract for failure to pay UM benefits and bad faith refusal to settle), which were not asserted against Mrs. Ellison. Mrs. Ellison indisputably was not a joint tortfeasor with 21st Century. *See, e.g.*, *Respess*, 585 So. 2d at 990 ("[A] UM carrier is 'neither a tortfeasor nor an insurer thereof.' "). Thus according to Mr. Willoughby, section 768.041(2) does not entitle Mrs. Ellison to a setoff in the amount of the 21st Century settlement. And under the foregoing precedent, Mr. Willoughby is correct.

Nonetheless, Mrs. Ellison contends that the entire amount of the 21st Century settlement should be set off because the

settlement does not apportion amounts attributable to the UM benefits claim (i.e., damages attributable to Mr. Willoughby's injuries) and damages attributable to the bad faith claim. It is true that where "a settlement recovery is not apportioned between (a) claims for which co-defendants [sic] are jointly and severally liable with the settling co-defendant[] [sic] and (b) claims which were only asserted against the settling co-defendant [sic], the entire amount of the undifferentiated recovery is allowable as a set-off." *Escadote*, 211 So. 3d at 1063 (citing *Dionese v. City of West Palm Beach*, 500 So. 2d 1347, 1351 (Fla. 1987)). But as the Third District explained in *Escadote*, these principles do not apply where a plaintiff's claim against a settling codefendant "was not and could not be asserted against the [nonsettling] co-defendants [sic]." *Id.* (noting that plaintiff's claim against settling codefendant "included an element of damages that was not a part of" the claim against nonsettling defendants). As in *Escadote*, Mr. Willoughby's claims against 21st Century were "not and could not be asserted against" Mrs. Ellison,

and the settlement included elements of damages that were not part of Mr. Willoughby's claim against Mrs. Ellison.[2]

Mrs. Ellison also argues that denial of setoff results in a windfall to Mr. Willoughby. However, our supreme court rejected this argument in *D'Angelo*, explaining:

> Settlement dollars are not synonymous with damages but merely a contractual estimate of the settling tortfeasor's liability; they include not only damages but also the value of avoiding the risk and expense of trial. Given these components of a settlement, there is no conceptual inconsistency in allowing a plaintiff to recover more from a settlement or partial settlement than he could receive as damages.

D'Angelo, 863 So. 2d at 318 (cleaned up). Faced with the very real risk of having the obviously inadequate $10,000 UM policy be converted into a "limitless policy" via Mr. Willoughby's bad faith claim, 21st Century chose to quantify and resolve its liability by settling with Mr. Willoughby. *See Harvey v. GEICO Gen. Ins. Co.*,

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[2] In *Escadote*, the lion's share of the settlement amount was attributable to the plaintiff's statutory attorney fee claim against the settling codefendant, which was a claim "unique to" the plaintiff's claim against the settling defendant. *Escadote*, 211 So. 3d at 1061, 1061 n.3. Similarly here, a significant portion of the settlement amount apparently was attributed to Mr. Willoughby's statutory attorney's fee claim against 21st Century, which was unique to his bad faith claim against 21st Century.

259 So. 3d 1, 20 (Fla. 2018) (Canady, C.J., dissenting). *D'Angelo* teaches us that Mrs. Ellison's windfall argument is unavailing under these circumstances. Against this precedential backdrop, we are bound to conclude that the trial court properly denied setoff under section 768.041(2) and case law interpreting that statute.[3]

2. Setoff under Section 768.76(1)

Setoff under section 768.76(1) is likewise unavailable because the 21st Century settlement proceeds do not fall within the statutory definition of "collateral sources" set forth in section 768.76(2)(a). At common law, "the damages aspect of the collateral source rule prevented the reduction of damages by collateral sources available to the plaintiff. This rule rested on the principle that a tortfeasor should not benefit from the collateral sources available to the plaintiff." *Joerg v. State Farm Mut. Auto. Ins. Co.*, 176 So. 3d 1247, 1249 (Fla. 2015) (citations omitted). The legislature abrogated the common law rule by enacting section

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[3] Although the trial court did not rely on the above-discussed case law to deny setoff, it was bound by those decisions. *See Pardo v. State*, 596 So. 2d 665, 666 (Fla. 1992). And we are bound to affirm since "the decision of the trial court is primarily what matters, not the reasoning used." *Applegate v. Barnett Bank of Tallahassee*, 377 So. 2d 1150, 1152 (Fla. 1979).

768.76(1), the purpose of which—like the purpose of section 768.041—is to prevent windfalls to plaintiffs; section 768.76(1) also aims to reduce insurance costs. *See id.*

Section 768.76(1) applies to actions where "liability is admitted or determined by the trier of fact and in which damages are awarded to compensate the claimant for losses sustained." § 768.76(1). In such actions, section 768.76(1) mandates setoff of "all amounts which have been paid for the benefit of the claimant . . . from all collateral sources." *Id.* In relevant part, "collateral sources" are defined as "payments made to the claimant . . . by or pursuant to," among other things, "automobile accident insurance" and "other similar insurance." § 768.76(2)(a)(2).

The question, then, is whether the 21st Century settlement proceeds are payments from a "collateral source" within the meaning of section 768.76(2)(a). In the settlement agreement, Mr. Willoughby released 21st Century from all claims "related to the [a]ccident or the [p]olicy." At the outset, we note that although the parties and the trial court seemingly divided the settlement funds into two categories—assigning $10,000 to UM benefits and $3.99 million to bad faith damages—neither party attempted to allocate

the settlement funds to particular categories of damage, such as past or future medical expenses or economic versus noneconomic damages. Accordingly, the trial court wasn't faced with (and we do not decide) the question of whether any portion of the settlement proceeds constituted payments for future medical expenses, which are not subject to setoff under section 768.76(1). *See Allstate Ins. Co. v. Rudnick*, 761 So. 2d 289, 293 (Fla. 2000) (holding that section 768.76(1) "includes only those benefits that have already been paid or that are presently due and owing, rather than those benefits potentially payable in the future"); *see also Joerg*, 176 So. 3d at 1249 ("Additionally, this Court has determined that section 768.76 does not allow reductions for *future* medical expenses."). Likewise, the trial court didn't address (and neither do we) whether any portion of the settlement proceeds constituted payments for noneconomic damages, which similarly are not subject to setoff under section 768.76. *See Olson v. N. Cole Const., Inc.*, 681 So. 2d 799, 800 (Fla. 2d DCA 1996) (citing *Wells*, 659 So. 2d at 253).

Whatever portion of the settlement is allocable to Mr. Willoughby's claim for UM benefits under the 21st Century policy is not subject to setoff. For starters, subsection 768.76(1) provides

that "there shall be no reduction for collateral sources for which a subrogation or reimbursement right exists." Here of course, 21st Century has a subrogation claim against the Ellisons for the amount of UM benefits it paid to Mr. Willoughby on account of his injuries caused by the crash. *See* § 627.727(6); *Metro. Cas. Ins. Co. v. Tepper*, 2 So. 3d 209, 214 (Fla. 2009). Thus, to whatever extent the settlement payments are subject to subrogation, they are not collateral sources because they are excluded by section 768.76(1). Furthermore, as the trial court noted, the case law is clear that "uninsured motorist payments are not collateral sources to be deducted from the jury verdict." *Obenland*, 629 So. 2d at 267 (citing *Int'l Sales-Rentals Leasing Co. v. Nearhoof*, 263 So. 2d 569 (Fla. 1972)); *accord Respess*, 585 So. 2d at 989 ("[T]he general rule . . . is that a joint tortfeasor is not entitled to setoff for amounts paid by a UM carrier to the injured party."); *see also Hughes*, 831 So. 2d at 1241 (holding that the trial court erred reversibly by reducing the damages award by "the amount of UM benefits" that plaintiff received in a settlement with the UM insurer). The underlying principle is that "[t]he cautious insured should not be penalized for obtaining UM insurance and, by the same token, it

would be unfair for the tortfeasor to benefit by the insured's payment of the UM insurance premium or by the UM insurer's statutorily mandated payments on behalf of the tortfeasor." *Obenland*, 629 So. 2d at 267.

Moving on to whatever portion of the settlement is allocable to Mr. Willoughby's claim for bad faith damages, the above-cited cases (upon which the trial court relied to deny setoff) involved settlements for UM benefits within the applicable policy limits. We have uncovered no case law addressing the question of whether extracontractual damages paid to a first-party claimant on a UM bad faith claim are subject to setoff. By statutory definition, "collateral sources" means "payments made to the claimant . . . pursuant to . . . automobile accident insurance that provides health *benefits* or income disability coverage; and any other similar insurance *benefits*." § 768.76(2)(a)(2) (emphasis added). An extracontractual payment on a bad faith claim does not appear to meet this definition because it is not a payment of "benefits."

"Benefits" in the automobile casualty insurance context traditionally means the amount an insurer must pay on account of an insured's injuries that fall within the scope and limits of

coverage. *See, e.g.*, *Progressive Select Ins. Co. v. Fla. Hosp. Med. Ctr.*, 260 So. 3d 219, 224 (Fla. 2018) (distinguishing insurance "benefits" from a claimant's "expenses and losses" and explaining how "expenses and losses" differ from "benefits" recoverable under a PIP policy). Damages recoverable on a UM bad faith claim include the claimant's "damages" that fall within the policy limits (i.e., benefits), but—by statutory mandate—bad faith damages also include an "amount in excess of the policy limits." §§ 627.727(10), 624.155(8); *see Fridman v. Safeco Ins. Co. of Illinois*, 185 So. 3d 1214, 1221 (Fla. 2016). And as our supreme court has explained, bad faith damages are considered a "punitive, extracontractual award" because bad faith claims punish the insurer's failure to fulfill its obligations to the insured. *Harvey*, 259 So. 3d at 13, 15 (Canady, C.J., dissenting); *see Fridman*, 185 So. 3d at 1223 (explaining that bad faith damages under section 627.727(10) "are, in substance, a penalty"). Because punitive, extracontractual damages—like bad faith damages—are not "benefits," we conclude that the portion of the settlement allocable to bad faith damages is not subject to setoff.

a. Distribution of the Settlement Proceeds Under the Settlement Agreement and Mrs. Ellison's Reliance on Willoughby v. Agency for Health Care Admin.

The settlement agreement recites that the $1.735 million payable to Mr. Willoughby "constitute[s] damages on account of personal injuries or sickness, within the meaning of Section 104(a)(2) of the Internal Revenue Code." For the reasons discussed above and to the extent the payments to Mr. Willoughby are viewed as compensation for past medical expenses (as opposed to future medical expenses or noneconomic damages), they are not "collateral sources" as defined by section 768.76(2)(a). Likewise, the $2.265 million payment to the trust account of Mr. Willoughby's counsel does not appear to fall within any definition of "collateral sources" in section 768.76(2)(a); instead, some or all of that payment appears subject to offset as an amount Mr. Willoughby paid to secure his right to the 21st Century settlement. *See* § 768.76(1) (stating that collateral source "reduction shall be offset to the extent of any amount which has been paid . . . by, or on behalf of, the claimant . . . to secure her or his right to any

collateral source benefit which the claimant is receiving as a result of his or her injury").[4]

Like she did in the trial court, Mrs. Ellison relies on our decision in *Willoughby v. Agency for Health Care Admin.*, 212 So. 3d 516 (Fla. 2d DCA 2017), to argue that the entirety of the 21st Century settlement proceeds are collateral sources within the meaning of 768.76(1). In *Willoughby*, the Agency for Health Care Administration (AHCA) sought to impose a Medicaid lien against the proceeds of the 21st Century settlement to collect approximately $148,000 in medical expenses that Mr. Willoughby incurred (and Medicaid paid) in connection with the injuries he suffered in the crash with Mr. Ellison. *Id.* at 519–20. Mr. Willoughby argued that "no part of the bad faith recovery could be allocated to his medical expenses," maintaining that "bad faith damages were exclusively a punishment for failure to settle an insurance claim properly." *Id.* at 520–21. We rejected this argument, reasoning that the settlement agreement characterized the amounts payable to Mr. Willoughby as

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[4] Our record does not reveal to whom the $2.265 million was distributed from the trust account, and neither party has argued that Mr. Willoughby's counsel's ultimate receipt of some or all of these funds affects the setoff analysis.

"damages on account of personal injuries or sickness" and "[d]amages in first-party bad faith actions are to include *the total amount of a claimant's damages*." *Id.* at 521 (quoting *Fridman*, 185 So. 3d at 1223).

Section 409.910(6), Florida Statutes (2015)—upon which AHCA relied to support its lien—applies to "third-party benefits" including those "received from any causes of action, suits, claims . . . and demands that accrue to the [Medicaid] recipient . . . related to any covered injury, illness or necessary medical care . . . for which Medicaid paid." *Willoughby*, 212 So. 3d at 521 (cleaned up). Applying this statutory text, we concluded that "the bad faith portion of the settlement was available to satisfy the lien." *Id.* In so concluding, we explicitly recognized that, since "not all personal injury damages are for medical expenses," AHCA could not "recoup its Medicaid lien from settlement proceeds allocable to nonmedical expenses damages." *Id.* at 522–23. We also held that the Medicaid lien did not attach to future medical expenses and was limited to past medical expenses. *Id.* at 524–25. Because Mr. Willoughby and AHCA stipulated that "Mr. Willoughby recovered less than $147,019.61 for past medical expenses" in the 21st Century

settlement, we remanded for further consideration of the amount of the lien to be imposed against that portion of the settlement proceeds. *Id.* at 525–26.

Willoughby does not support Mrs. Ellison's contention that the 21st Century settlement proceeds are a collateral source within the meaning of section 768.76(2)(a). That some portion of the proceeds (in an amount less than $148,000) fell within the definitional ambit of section 409.910(6) has no bearing on whether the proceeds meet the definitional criteria of section 768.76(2)(a)—which provides a narrower, more specific definition of "benefits" and sources thereof than section 409.910(6). And to the extent *Willoughby* aligns with the holdings of *Rudnick* and *Joerg* by excluding future medical expense payments for lien and offset purposes respectively, *Willoughby* undermines Mrs. Ellison's argument that the entire 21st Century settlement proceeds are a collateral source.[5]

[5] Given that the amounts payable to Mr. Willoughby are structured as periodic payments to be made over the next several decades, there is at least some question as to whether and to what extent those payments are for future medical expenses. Likewise, there is an obvious question as to whether and to what extent those payments include noneconomic damages, which *Willoughby* recognized were not subject to AHCA's lien and which are not

Lastly, while Mrs. Ellison was not a party to (and is not bound by) the AHCA-Willoughby stipulation that the 21st Century settlement covered less than $148,000 of Mr. Willoughby's past medical expenses, Mrs. Ellison stipulated in *this* action that Mr. Willoughby's past medical expenses were $147,020. And she has made no attempt to show what portion of the settlement is attributable to those past medical expenses *or* any other category of damages. As discussed above, this is likely fatal to her ability to establish that some or all of the settlement proceeds are subject to offset under supreme court precedent interpreting section 768.76(1). In short, *Willoughby* does not alter our conclusion that the 21st Century settlement proceeds are not collateral sources subject to offset under section 768.76(1).

Mrs. Ellison again urges that, unless the judgment is reduced by the entire $4 million settlement amount, Mr. Willoughby will receive a windfall. To the extent this is true, it is out of our hands. As this court and others have recognized, the underlying principle of the collateral source rule " 'is that it is better for the wronged

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subject to setoff under section 768.76(1). *See id.* at 522–23; *Olson*, 681 So. 2d at 800.

plaintiff to receive a potential windfall than for a tortfeasor to be relieved of responsibility for the wrong,' particularly in the case of UM insurance since the insured procured the insurance." *Obenland*, 629 So. 2d at 267 (quoting *Respess*, 585 So. 2d at 990); *accord Terri Van Winkle, P.A.*, 813 So. 2d at 1069 (Ervin, J., concurring). Here, Mr. Willoughby's counsel was "ingenious" in inducing 21st Century to agree to the settlement (which resolved 21st Century's potentially "limitless" liability under a $10,000 UM policy), and we cannot discern in either the statutory text or the existing case law any reason why "that ingenuity should accrue to the benefit of" Mrs. Ellison. *Respess*, 585 So. 2d at 990; *see Harvey*, 259 So. 3d at 20 (Canady, C.J., dissenting).

Conclusion

As discussed above, this case features a question of first impression. Because allocation of liability in settlements of tort and bad faith actions is a significant and recurring concern to the citizens of Florida, we certify the following question as one of great public importance:

> IS A SETTLEMENT PAYMENT MADE BY AN UNINSURED MOTORIST INSURER TO SETTLE A FIRST-PARTY BAD FAITH CLAIM SUBJECT TO SETOFF UNDER SECTION

768.041(2) OR A COLLATERAL SOURCE WITHIN THE MEANING OF SECTION 768.76?

Affirmed and question certified.

CASANUEVA and LaROSE, JJ., Concur.

Opinion subject to revision prior to official publication.