

## What Must be Pled Where the Insured Refuses to Submit to a CME?

In State Farm Mut. Auto. Ins. Co. v. Curran, SC12-157 (Fla. 2014), the Florida Supreme Court recently held that if an insured refuses to submit to a Compulsory Medical Examination, or otherwise breaches the CME provision in a policy, the insured is still entitled to coverage unless the UM carrier *pleads and proves actual prejudice*.

In the UM context, a CME is a post-loss obligation of the insured. It is not a condition precedent to filing suit or triggering coverage. Thus, where the insured breaches the CME provision, the insured does not automatically forfeit insurance coverage.

Rather, where an insured fails to comply with the CME provision, the UM carrier must not only plead as an affirmative defense that the insured is not entitled to coverage as a result of the breach, but must also plead within that affirmative defense that it was prejudiced by the breach. The UM carrier then bears the burden of proving that prejudice. This is so regardless of the policy language.

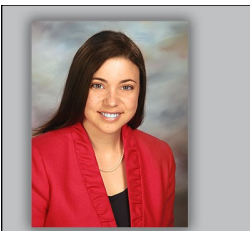
From an appellate standpoint, it is imperative that carriers properly assert both aspects of this affirmative defense. If they do not, an appellate court may find that the issue is not preserved for appeal and that the carrier waived this defense.

*If you have any questions about an insured's breach of a CME provision and what a carrier must plead and prove, please feel free to contact us at any time.*

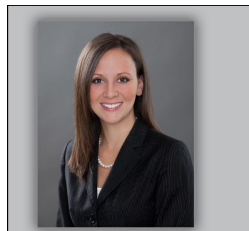
\* \* \* \*

*The Boyd & Jenerette Appellate Department can assist you with all phases of state and federal litigation and appellate proceedings. Our attorneys are experienced in identifying legal issues and evaluating the chances of winning an appeal. We will initially consult with the client and provide our recommendations for a cost effective appellate strategy. Our appellate attorneys are skilled in drafting persuasive appellate briefs and are excellent oral advocates. We are also brought in at the trial court level to advise and assist the client with preservation of issues for appeal.*

*We look forward to assisting you with all of your appellate-related needs. If you have any questions or would like to refer a case, please contact our appellate attorneys.*



**KANSAS R. GOODEN**  
DIRECT: 904.493.3755 | FAX: 904.493.5658  
EMAIL: KGOODEN@BOYD-JENERETTE.COM



**KELLY DOWNER**  
DIRECT: 904.353.6243 | FAX: 904.493.5656  
EMAIL: KDOWNER@BOYD-JENERETTE.COM