IN THE DISTRICT COURT OF APPEAL
FOURTH DISTRICT, STATE OF FLORIDA

WELLS FARGO BANK, N.A., et al.,

Appellants,

Case No. 4D2025-1598
L.T. Case No. CACE-16-000592

v.

LEWIS GOPHER, JR., et al.,

Appellees.
_____/

AMICI CURIAE BRIEF OF FLORIDA BANKERS ASSOCIATION, AMERICAN BANKERS ASSOCIATION, AND BANK POLICY INSTITUTE FILED IN SUPPORT OF APPELLANTS

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STATEMENT OF IDENTITY AND INTEREST OF AMICI CURIAE

Established in 1888, the Florida Bankers Association ("FBA") is a voluntary organization that represents the interests of banks, trust companies, and financial institutions in Florida, providing support so they can better serve their customers and communities. FBA has more than 150 bank members, including community banks (many of which are chartered or headquartered in Florida) and thrifts; regional banks; and large, national financial institutions. In addition, FBA is home to a Trust and Wealth Management Division, which counts over 40 independent trust companies and banks with trust departments as members. These members serve as trustees and administer trusts for clients. FBA regularly represents the interests of its members before all branches of government and frequently appears as amicus curiae in the state and federal courts on issues of great import.

Further, FBA has long held a deep interest in the proper administration of trusts, in particular. Its Trust and Wealth Management Division closely monitors Florida law and engages in various legislative initiatives to help trust bankers and wealth management professionals better assist clients. FBA also has an

Independent Trust Professional Peer Group, which provides a forum for Florida bankers and trust companies to explore fiduciary compliance, estate and wealth planning strategies, and evolving trust law in Florida.

The American Bankers Association ("ABA") was established in 1875 and is the united voice of America's $23.4 trillion banking industry. Like FBA, ABA's numerous members comprise small, regional, and large national and state banks who serve as trustees to administer trusts for clients and who have a deep interest in the proper administration of trusts.

Bank Policy Institute ("BPI") is a nonpartisan public policy, research, and advocacy group that represents universal banks, regional banks, and the major foreign banks doing business in the United States. BPI produces academic research and analysis on regulatory and monetary policy topics, analyzes and comments on proposed regulations, and represents the financial services industry with respect to cybersecurity, fraud, and other information security issues. Many of BPI's members operate in Florida, and, like FBA and ABA, many of BPI's members serve as trustees in Florida. BPI and these members have a strong interest in the clear and

consistent application of Florida's trust law.

This case presents important questions about the ability of trustees to rely on the plain language of trust instruments when administering trusts without risking massive liability because plaintiffs later in hindsight prefer a different investment approach. Amici have a strong interest in ensuring that Florida's trust law, as enacted by the legislature, is applied consistently and predictably so that trustees can administer trusts with confidence and investors and businesses can continue to rely on Florida as a stable place to invest.

SUMMARY OF ARGUMENT

This case presents a stark choice between two competing approaches to trust administration: one grounded in written instruments, statutory protections, and settled expectations; and the other driven by hindsight, speculative damages, and judicial revision of unambiguous trust terms. Our legislature has unequivocally adopted the former.

Through its trusts, the Tribe exercised its statutory and contractual rights to define investment parameters, and the trustee reasonably relied on those express directives. The trial court,

however, disregarded the Tribe's express investment directions, the trusts' plain language, and the defined responsibilities the trustee accepted when it agreed to serve as trustee; nullified the legislature's reasonable reliance safe harbor; and imposed a staggering judgment based on a hypothetical investment strategy that contradicted the terms of the governing instruments.

This has serious consequences for Florida's banking industry. If courts refuse to enforce trust agreements as written, all trustees, including banks and trust companies serving in that role, will be placed in the untenable position of risking liability regardless of how they invest. That risk will chill their willingness to serve as trustees in Florida and threaten Florida's reputation as a preeminent venue for investment—a status built on the transparent and predictable application of law.

Amici ask the Court to reaffirm the Florida Legislature's safe-harbor for trustees who reasonably rely on the express terms of trust instruments and whose agreement to serve as a trustee has been induced by strict reliance upon the terms of the proffered governing instrument.

ARGUMENT

I. The Trial Court's Rulings Threaten to Undermine Trust Administration in Florida by Departing from the Plain Language of Trust Agreements.

The administration of trusts in Florida begins—and ordinarily ends—with the plain language of the trust itself. Florida law has long treated the four corners of the trust as the controlling source of the settlor's intent, requiring courts and trustees alike to give effect to the trust's express terms as written. *See, e.g.*, *Minassian v. Rachins*, 152 So. 3d 719, 725 (Fla. 4th DCA 2014) ("Generally, the polestar of trust or will interpretation is the settlor's intent, which should be ascertained from the four corners of the document through consideration of all the provisions of the will or trust taken together.") (cleaned up; citations omitted); *accord Jervis v. Tucker*, 82 So. 3d 126, 128-29 (Fla. 4th DCA 2012).

Amici's members rely on this elementary and self-evident principle of law daily when administering trusts. The trial court, however, abandoned it here, effectively rewriting the trusts after the fact. That error does not merely affect the parties to this case; it injects uncertainty into routine trust administration statewide and undermines the predictability upon which trustees, beneficiaries,

and financial institutions depend to carry out settlors' instructions faithfully and efficiently.

A. First Principles of Florida Law Focus Trust Administration on the Plain Language of Trust Agreements.

Florida's Trust Code mandates that a trustee start with the plain language of the trust agreement. *See* § 736.0105(2), Fla. Stat. (providing "[t]he terms of a trust prevail over any provision of this code except" various enumerated provisions); § 736.1101(1), Fla. Stat. ("The intent of the settlor as expressed in the terms of the trust controls the legal effect of the dispositions made in the trust" subject to certain exceptions identified in section 736.0105(2)).

"[U]nless it is clear that the plain meaning was not intended," that should be the end of the inquiry. *See Miles v. Parrish*, 199 So. 3d 1046, 1048 (Fla. 4th DCA 2016) ("Because '[t]he words of a governing text are of paramount concern,' Antonin Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts* 56 (2012), this court will not look beyond the express language unless it is clear that the plain meaning was not intended."); *accord In re Est. of Barry*, 689 So. 2d 1186, 1187-88 (Fla. 4th DCA 1997) ("Where the terms of an agreement . . . are unambiguous, its meaning and the

intent of the maker are discerned solely from the face of the document, as the language used and its plan [*sic*] meaning controls.").[1]

This has long been the law in Florida. As this Court concisely explained years ago:

> The duties, powers and liabilities of executors and trustees are ordinarily fixed by the terms of the will and trust agreement. For instance, the trust itself, whatever it be, constitutes the charter of the trustee's powers and duties. From the trust, the trustee derives the rule of his conduct, the extent and limit of his authority, the measure of his obligation.

Jones v. First Nat'l Bank in Ft. Lauderdale, 226 So. 2d 834, 835 (Fla. 4th DCA 1969) (citations omitted).

In addition to being required by Florida law, amici's experience is that this textualist approach to trust administration is critical to the ability of trustees to administer trusts in ways that honor the grantor's intent and maximize benefits to beneficiaries in a way that is consistent with that intent. The required plain-language approach means that a trustee need not guess or second-guess

[1] *See also U.S. R.R. Ret. Bd. v. Fritz*, 449 U.S. 166, 176 (1980) ("the plain language of [relevant statute] marks the beginning and end of our inquiry").

what the grantor might have meant but did not write in the instrument. Relatedly, reliance on the trust's plain language minimizes the risk of litigation based on later-expressed purported intent that goes beyond or is absent from the terms of the instrument. This all lends itself to reduced transaction costs and more predictable outcomes for everyone involved, including beneficiaries who are also able to refer to a trust's plain language and know what duties they are owed.

Predictability is especially important when, as here, the provisions being interpreted relate to investments. There is no one right way to manage investment portfolios. The reasonable and prudent approach to investing can vary widely depending on goals, time horizon, and risk tolerance—all of which must be consistent with the grantor's intent. And the results of any given investment strategy can be difficult to predict in advance. As a result, the propriety of that strategy in any given timeframe is easy to second-guess in hindsight. Trustees managing investment portfolios must be able to rely on the written instructions they are provided in the plain text of the trust agreement to guide their approach and guard against hindsight criticisms.

The obligation of trustees to follow the plain language of trust agreements also is important to the beneficiaries of such trusts. For example, if a beneficiary of a trust knows from the plain language of a trust agreement that the trust's assets must be invested conservatively in bonds, the beneficiary may be more willing to invest her other assets (that are not a part of the trust's corpus) in more volatile securities. That beneficiary would rightly be unhappy if there was a market downturn and it turned out that, notwithstanding the plain language of the trust agreement, the trustee had decided to invest in securities that held higher upside but also lower downside. In such a hypothetical downturn, this beneficiary could be left with nothing.

This case perfectly illustrates the point. When the Seminole Tribe's former investment advisor invested in riskier investments—and then lost money—in the early 2000s, the Tribe sued the investment advisor for being too risky. In response, the Tribe deliberately shifted course, choosing to prioritize capital preservation above all else and ultimately prohibiting the trustee from investing in anything other than government-backed bond funds. When that conservative strategy later insulated the trust

during economic downturns, the Tribe publicly credited its own judgment. Now years later, the Tribe's members have reversed course and sued the trustee for failing to assume the very risks that the trusts prohibited.

Endorsing the Tribe's hindsight-driven change in position, the trial court disregarded settled first principles of Florida trust law. Despite the trust's explicit authorization to invest "without diversification" and the 2012 trust's express prohibition on stocks and equity-like investments, the trustee was held liable for more than a billion dollars for failing to diversify its investment into stocks.[2] That result is impossible to square with the plain language of the trusts and improperly transforms compliance with written instructions into actionable misconduct.

The court compounded that error by disregarding the parties' statutory right to contractually override the Prudent Investor Rule. Section 518.11(2) expressly permits a grantor to expand, restrict, or

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[2] *See* Second Corrected Am. Final J. ¶ 59 ("under the Prudent Investor Law and Modern Portfolio Theory, prudent investment of the Trust corpus required diversification with stocks"), ¶ 63 ("Defendants were aware of their obligations under Florida Prudent Investor law, Fla. Stat. 518.11, to diversify the instruments of the Trust corpus.").

eliminate fiduciary duties through the trust instrument, and that is exactly what the Tribe chose to do here. The pre-2012 trusts authorized investment "without diversification" and "without being restricted in any way by any statute." The trusts further provided that the trustee would only be liable for "damages attributable to the Trustee's gross negligence, willful malfeasance, or bad faith." These are standard trust terms, relied upon daily by trustees across Florida when determining how to manage trust assets.

The 2012 trust was even more explicit, affirmatively declaring that preservation of principal is the trust's "paramount objective," restricting investments to fixed-income securities with strong credit quality, prohibiting investment in stocks or other "equity-like" investments, and continuing to limit the types of liability that could be imposed on a trustee.

A trustee administering trusts with this language in a textualist state like Florida should be allowed to invest "without diversification," "without being restricted in any way by any statute" (including the Prudent Investor Rule, which is statutory), and without liability, except for "gross negligence, willful malfeasance, or bad faith." The application of Florida's bedrock interpretative

principles to this express language in the trusts should have been clear.

Allowing the trial court's disregard of these settled principles to stand would destabilize trust administration in Florida. Trustees, including institutional trustees, administer thousands of trusts governed by bespoke instruments and make daily decisions based on written investment directives and liability standards chosen by grantors and accepted by trustees. They must be able to rely on those instructions without fear that courts will later impose hindsight-driven obligations untethered from the trust's text. The plain language of trust agreements must be applied so as not to encourage litigation that could result in run-away verdicts and restore confidence in all Florida trustees that they can (and must) adhere to the plain language of the trusts they administer.

B. The Trial Court's Departure from the Trusts' Plain Language Threatens the Ability of Amici's Members to Build and Grow in Florida.

The trial court's refusal to honor the trusts' plain language does more than contravene settled law—it places trustees in an untenable position. Banks and independent trust companies, including amici's members, must assess at the outset whether to

accept fiduciary appointments, and that decision necessarily turns on the investment parameters and liability limits set out in the trust documents.

Deviation from plain language principles will chill fiduciary service in Florida. If courts may later disregard a trust's directives and impose massive liability in contravention with the written terms, trustees will be hesitant to serve at all. The result will be fewer professional trustees, higher costs, and diminished access to fiduciary services for Florida citizens.

Moreover, the consequences of deviating from plain language principles extends beyond trustees. They threaten Florida's standing as a premier venue for estate planning and business investment. Individuals and companies choose to invest in Florida because of its reputation as a favorable business and tax environment that includes "tax advantages, lawsuit reform, and state policies that foster a thriving economy."[3] "[O]ver $36.05 billion

[3] Florida Chamber Foundation's Latest Analysis Shows Florida Leads the Nation for Business Relocations, Generating Four Times the Business Relocations in Texas, Fla. Chamber of Commerce, https://www.flchamber.com/florida-chamber-foundations-latest-analysis-shows-florida-leads-the-nation-for-business-relocations-generating-four-times-the-business-relocations-in-texas/ ("In 2025,

in net income mov[es] into [Florida] each year,"[4] and much of the wealth generated by this income is managed by the amici's members. That investment in the state benefits all Floridians.

Judicial decisions that disregard negotiated trust terms and statutory protections (thereby producing runaway verdicts) undermine the confidence on which commercial relationships depend. Both individuals and businesses must be able to rely on the written instruments they negotiate, secure in the knowledge that those terms will not be disregarded by plaintiffs, judges, or—contrary to settled trust principles—as occurred here, juries.

Florida's business community depends on courts that respect the legislature's policy choices and interpret trust terms according to their plain text, not hindsight-driven theories of liability. A clear reaffirmation by this Court of Florida's first principles—supremacy

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Florida continues to be a beacon for local business relocation and growth, building on a strong foundation that includes tax advantages, lawsuit reform, and state policies that foster a thriving economy. ").

[4] Kyle Baltuch, BREAKING NEWS: Net Income Migration to Florida Remains Above $4M Per Hour, Significantly More Than Any Other State, Fla. Chamber of Commerce, https://www.flchamber.com/breaking-news-income-migration-to-florida-remains-above-4m-per-hour-significantly-more-than-any-other-state/.

of text, statutory reliance, and faithful enforcement of private agreements—will restore the certainty undermined by the trial court's rulings.

Finally, the trial court's deviation from the trusts' plain language was especially problematic because the court permitted a Monday-morning-quarterback approach to investment damages, calculating liability based on an unrealistic, risky, hypothetical portfolio—one that, unlike the trustee's actual investments, would have lost money during the Great Recession. Damages claims like this should not proceed to trial in the first place. *See Figel v. Wells Fargo Bank, N.A.*, No. 10-CV-60737, 2011 WL 860470, at *4 (S.D. Fla. Mar. 9, 2011) (Cohn, J.) ("Plaintiffs offer not one case where a trustee was found to have breached a trust or a fiduciary duty, or was otherwise found negligent, because it invested the corpus of the trust in a manner that did not earn as much as it could have. Furthermore, Plaintiffs offer not one fact that indicates Wells Fargo administered the Figel Trust in a manner contrary to the terms of the trust instrument. Plaintiffs, therefore, have failed to raise a disputed issue of fact regarding Defendant's alleged breach of the Figel Trust.").

The trial court's outlier rulings should not become an accepted approach in Florida. Instead, this Court should reiterate that trust administration must be focused on the plain language of trust agreements and reverse the judgment for failing to follow that elemental rule.

II. The Trial Court's Refusal to Allow for a "Reasonable Reliance" Defense Exacerbates These Concerns.

Not only did the trial court depart from the plain meaning of the parties' trust agreements, the trial court also deprived the trustee of a key protection from liability provided by the legislature. This Court should correct that error because it exacerbates the concerns stated above.

Florida's Trust Code provides that "[a] trustee who acts in reasonable reliance on the terms of the trust as expressed in the trust instrument is not liable to a beneficiary for a breach of trust to the extent the breach resulted from the reliance." § 736.1009, Fla. Stat.; *see also* § 518.11(2), Fla. Stat. (providing that a "fiduciary is not liable to any person for the fiduciary's reasonable reliance on" a trust instrument's "express provisions" that eliminate or modify the Prudent Investor Rule's default duties). This provision protects a

trustee who reasonably relies on the trust's plain text, even if that reliance ends up being misplaced, or even if the plain text is later invalidated.[5]

This protection is important for two reasons. *First*, it incentivizes trustees to follow the plain language of a trust instrument by providing a safe harbor for doing so. Trustees know that they will be protected from hindsight-driven second-guessing if they follow the trust's plain language. In the experience of amici's members, most trustees respond to this incentive structure by following the plain language, which is consistent with Florida's broader commitment to textual fidelity.

Second, the safe harbor avoids unfair outcomes. There are times when a judge reforms or narrowly interprets a trust agreement. It would be unfair to retrospectively apply those changes

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[5] *See* Restatement (Second) of Trusts § 226A (1959) ("If the trustee pays or conveys the trust property or any part thereof to the person who by the terms of the trust is entitled to it, and the trust is later held to be invalid in whole or in part, the trustee is liable to the person entitled to the property, if, but only if, when he made such payment or conveyance he knew that the trust was invalid or had or should have had reasonable doubt as to its validity."); *accord* Restatement (Third) of Trusts § 76, cmt. f (2007) ("A trustee is not liable . . . when a misdelivery . . . results from reasonable reliance on the express provisions of a trust instrument.").

against a trustee who was relying on the then-existing plain text. Trustees cannot be expected to predict which portions of trust agreements subsequently may be invalidated. The legislature directly addressed this concern by shielding trustees who reasonably rely on governing instruments as written.

The trial court, however, nullified that statutory protection by refusing to instruct the jury on the reasonable reliance safe harbor. Consequently, even if the Court concludes that the trustee did not act in compliance with the trusts' terms, the trustee still should have had the benefit of an instruction that it could not be held liable if it acted in "reasonable reliance" on the terms of the different trusts.

As discussed above, the plain text of the pre-2012 trusts provided that the trustee could invest "without diversification," and the plain text of the 2012 trust prohibited the trustee from investing in stocks and other equities. The trustee relied on those terms in deciding not to diversify into stocks. It could not possibly have known that, many years later, Plaintiffs would argue their own investment instructions from the 2012 trust should be disregarded as an "unfair" "exculpatory clause." The trustee was entitled to rely

on the plain language of the trusts in exercising its fiduciary duties.

CONCLUSION

By disregarding the trusts' plain text and simultaneously eliminating the reasonable reliance safe harbor, the trial court upended Florida's established trust law and inappropriately subjected the trustee to massive liability for conduct that was reasonable under the governing instruments. If allowed to stand, this approach threatens Florida's business ecosystem by deterring banks and independent trust companies from serving as trustees, which would in turn slow the flow of investment capital into the state. The Court should reverse the trial court's judgment.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on February 11, 2026, a true and correct copy of the foregoing was filed with the Florida Courts e-Filing Portal and furnished via email through that Portal to the following:

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CERTIFICATE OF COMPLIANCE

I HEREBY FURTHER CERTIFY that the foregoing complies with the font and type-face requirements set forth in Florida Rule of Appellate Procedure 9.045 and complies with the word count limits requirement of Florida Rule of Appellate Procedure 9.370(b) because it does not exceed 5,000 words.

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