

**Neil J. Gillespie**  
8092 SW 115<sup>th</sup> Loop  
Ocala, Florida 34481

Telephone: (352) 854-7807  
email: neilgillespie@mfi.net

VIA US CERTIFIED MAIL, RRR  
Article No.: 7010 0780 0000 8981 6443

September 15, 2010

Ms. Annemarie Craft, Bar Counsel  
Attorney Consumer Assistance Program, ACAP  
The Florida Bar  
651 East Jefferson Street  
Tallahassee, FL 32399-2300

RE: Robert W. Bauer; The Florida Bar File No. 2011-00,073 (8B)

Dear Ms. Craft:

Thank you for your letter and enclosure of September 2, 2010. While I appreciate the letter you provided from Mr. Rodems on behalf of Mr. Bauer, this letter was previously provided by Mr. Kitchen, see his letter of August 23, 2010 copy enclosed.

I appreciate that the time for filing my rebuttal to Robert Bauer has been extended to September 20, 2010. I will limit the rebuttal to 25 pages as requested.

What about the request I made for a 20 day extension to respond to Mr. Rodems' letter? Enclosed is my fax to Mr. Kitchen requesting a 20 day extension to respond to the Rodems letter. I also object to the Bar considering the Rodems letter. My complaint is not against Mr. Rodems. Also, according to the date of the Rodems letter, it arrived at the Bar prior to Mr. Bauer's response. Unless Mr. Rodems is acting as counsel for Mr. Bauer, why would the Bar permit or consider Rodems' letter? Please advise. If this practice is allowed, let me know how my supporters can submit letters on my behalf.

Enclosed is an email sent to me by Mr. Kitchen August 31, 2010. I am concerned with this statement made by him: "Furthermore, I feel obliged to inform you that recording our conversations without my express consent is a criminal act in Florida." I did not respond directly to Mr. Kitchen to prevent further escalation, but my recording of him was lawful. Mr. Kitchen was notified prior to speaking that the call was being recorded for quality assurance purposes. Mr. Kitchen consented to the recording by his voluntary act of

continuing the call. In the alternative Mr. Kitchen was free to hang up if he did not consent to being recorded.

Please note that The Florida Bar and other Florida state entities use similar call announcements and record or monitor calls for quality assurance purposes. Some time ago I retained an attorney to review this issue and the attorney advised me that the announcement was sufficient notice to lawfully record calls.

In addition, information provided by the *Reporters Committee For Freedom of the Press* advised that it is lawful to record calls on a business telephone extension pursuant to the business use exemption of Florida Statutes chapter 934, specifically section 934.02(4)(a)(1) and the holding of *Royal Health Care Servs., Inc. v. Jefferson-Pilot Life Ins. Co.*, 924 F.2d 215 (11th Cir. 1991). A courtesy copy of the case is enclosed. Upon information and belief all calls on my home office business telephone extension are lawfully recorded for quality assurance purposes pursuant to the holding of *Royal Health Care Servs., Inc.*

On August 25, 2010 I made a complaint of misconduct against attorney Seldon J. Childers, Bar ID No. 61112. The complaint was sent via certified mail and postal records show it was delivered to the Bar at 11:00 am on August 27, 2010. What is the current status of that complaint? I want to supplement my complaint, page 2, paragraph "a" about recovering attorney's fees. In addition to section 57.105 Florida Statutes, there is section 768.79, Florida Statutes, Offer of Judgment and Demand for Judgment, to recover attorney's fees in civil litigation that Mr. Childers failed to disclose.

Finally, please indicate to whom I must provide copies relative to bar complaints. I know that Mr. Bauer needs a copy of my rebuttal to his response, due September 20, 2010. What about Mr. Rodems? What about my response to the Rodems letter of August 23, 2010 in support of Mr. Bauer? What about interim matters, like this letter?

Please be advised that I am disabled and request accommodation under the Americans with Disabilities Act (ADA) and the ADA Amendments Act of 2008. I will do my best to cooperate and comply with the complaint process that I initiated. In return I ask that if you perceive some transgression on my part, please bring it to my attention in a non-confrontational manner so that we can resolve the issue. In my view it is not productive to escalate minor issues or fabricate evidence for the purpose of creating a record of conflict.

I look forward to working with you. Thank you for your consideration.

Sincerely,



Neil J. Gillespie

Enclosures



## THE FLORIDA BAR

651 EAST JEFFERSON STREET  
TALLAHASSEE, FLORIDA 32399-2300

JOHN F. HARKNESS, JR.  
EXECUTIVE DIRECTOR

850/561-5600  
WWW.FLORIDABAR.ORG

August 23, 2010

Mr. Neil Gillespie  
8092 Sw 115Th Loop  
Ocala, FL 34481

Re: Robert W. Bauer; The Florida Bar File No. 2011-00,073 (08B)

Dear Mr. Gillespie:

Enclosed you will find Mr. Ryan Christopher Rodems's response to your complaint, which does not reflect a copy being mailed to you.

If you wish to file a rebuttal to the response, please do so in writing by **September 3, 2010**.

Sincerely,

William Gautier Kitchen, Bar Counsel  
Attorney Consumer Assistance Program  
ACAP Hotline 866-352-0707  
Enclosure

cc: Mr. Ryan Christopher Rodems

 COPY

**Neil J. Gillespie**  
8092 SW 115<sup>th</sup> Loop  
Ocala, Florida 34481

Telephone: (352) 854-7807  
email: neilgillespie@mfi.net

VIA FAX (850) 561-5665

August 27, 2010

Mr. William Gautier Kitchen, Bar Counsel  
Attorney Consumer Assistance Program, ACAP  
The Florida Bar  
651 East Jefferson Street  
Tallahassee, FL 32399-2300  
ACAP Hotline (866) 352-0707

 COPY

RE: Robert W. Bauer; The Florida Bar File No. 2011-00,073 (8B)

Dear Mr. Kitchen:

Late yesterday I received your letter of August 23, 2010 with Mr. Rodems' letter to the Bar dated August 13, 2010. Thank you for providing the document. I believe this is the same document I attempted to discuss with you during our telephone call of August 25, 2010. Your letter to me of August 23, 2010 states "If you wish to file a rebuttal to the response, please do so in writing by September 3, 2010."

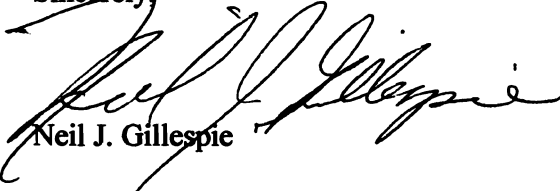
This is a request for a 20 day extension to respond to Mr. Rodems' letter. I will provide a response in writing by September 23, 2010.

In addition, I object to the Bar considering the letter from Mr. Rodems. My complaint is not against Mr. Rodems. Also, according to the date of Mr. Rodems' letter, it arrived at the Bar prior to Mr. Bauer's response. Unless Mr. Rodems is acting as counsel for Mr. Bauer, why would the Bar permit or consider Rodems' letter? Please advise.

Please confirm that you received this request, as well as my request faxed yesterday requesting a 20 day extension to respond to Mr. Bauer's answer to my complaint.

Thank you for your cooperation.

Sincerely,

  
Neil J. Gillespie

# Fax

**From:** Neil J. Gillespie  
8092 SW 115<sup>th</sup> Loop  
Ocala, FL 34481  
Telephone: (352) 854-7807

**To:** Mr. William Gautier Kitchen, Bar Counsel

---

**Fax:** (850) 561-5665

---

**Date:** August 27, 2010

---

**Pages:** two (2), including this cover page

---

**Re:** Request for additional 20 days to reply to Rodems letter

---

Please see accompanying letter. Thank you.

NOTE: all calls on the home office business telephone extension (352) 854-7807 are recorded for quality assurance purposes pursuant to the business use exemption of Florida Statutes chapter 934, section 934.02(4)(a)(I), and the holding of *Royal Health Care Servs., Inc. v. Jefferson-Pilot Life Ins. Co.*, 924 F.2d 215 (11th Cir. 1991).

NOTE: This fax and the accompanying information is privileged and confidential and is intended only for use by the above addressee. If you are not the intended recipient, you are hereby notified that any use, dissemination or copying of this fax and the accompanying communications is strictly prohibited. If you have received this communication in error, please immediately notify the sender by telephone, collect if necessary, and return the original message to me at the above address via U.S. mail. Thank you for your cooperation.

**Neil Gillespie**

---

**From:** "William Kitchen" <wkitchen@flabar.org>  
**To:** <neilgillespie@mfi.net>  
**Sent:** Tuesday, August 31, 2010 4:43 PM  
**Attach:** Object\_261A02\_0.PDF  
**Subject:** Recording

Mr. Gillespie,

I have forwarded your request for my removal from your case to my supervisor. Furthermore, I feel obliged to inform you that recording our conversations without my express consent is a criminal act in Florida. Please take note and refrain from the practice in the future.

-----  
Wm. Gautier Kitchen  
Senior Attorney, A.C.A.P/ Intake  
The Florida Bar  
1-866-352-0707

 COPY

Westlaw

Page 1

924 F.2d 215  
(Cite as: 924 F.2d 215)

**C**

United States Court of Appeals,  
Eleventh Circuit.  
ROYAL HEALTH CARE SERVICES, INCORPORATED, d/b/a Best Care, Plaintiff-Appellant,  
v.  
JEFFERSON-PILOT LIFE INSURANCE COMPANY, Defendant-Appellee.  
Nos. 90-5204, 90-5514.

Feb. 21, 1991.

Health care provider filed diversity suit against insurer pursuant to Florida Security of Communications Act for unauthorized recording of telephone conversation. The United States District Court for the Southern District of Florida, No. 88-959-CIV-SM, Stanley Marcus, J., granted insurer's motion for summary judgment. On appeal, the Court of Appeals held that "business extension" exception applied to telephone call so no "interception" occurred as defined in Act and insurer could not be held liable.

Affirmed.

#### West Headnotes

#### [1] Federal Courts 170B 433

##### 170B Federal Courts

170BVI State Laws as Rules of Decision

170BVI(C) Application to Particular Matters

170Bk433 k. Other Particular Matters.

##### Most Cited Cases

In diversity suit pursuant to Florida Security of Communications Act, proper interpretation of Act was question of Florida law and federal court was therefore required to construe Act as would the Supreme Court of Florida. West's F.S.A. §§ 934.01-934.43.

#### [2] Telecommunications 372 1440

##### 372 Telecommunications

372X Interception or Disclosure of Electronic Communications; Electronic Surveillance

372X(A) In General

372k1435 Acts Constituting Interception or Disclosure

372k1440 k. Persons Concerned; Consent. Most Cited Cases

(Formerly 372k494.1, 372k494)

To satisfy "business extension" or "extension phone" exception to Florida Security of Communications Act, communication must be intercepted by equipment furnished by provider of wire or electronic communication service in ordinary course of its business and call must be intercepted in ordinary course of business. West's F.S.A. § 934.02(4)(a).

#### [3] Telecommunications 372 1440

##### 372 Telecommunications

372X Interception or Disclosure of Electronic Communications; Electronic Surveillance

372X(A) In General

372k1435 Acts Constituting Interception or Disclosure

372k1440 k. Persons Concerned; Consent. Most Cited Cases

(Formerly 372k494.1, 372k494)

For purposes of determining whether "business extension" exception to Florida Security of Communications Act was met in connection with unauthorized recording of telephone conversation, telephone extension, not tape recorder, intercepted call. West's F.S.A. § 934.02(4)(a).

#### [4] Telecommunications 372 1440

##### 372 Telecommunications

372X Interception or Disclosure of Electronic Communications; Electronic Surveillance

372X(A) In General

372k1435 Acts Constituting Interception or Disclosure

372k1440 k. Persons Concerned; Con-

924 F.2d 215  
(Cite as: 924 F.2d 215)

sent. Most Cited Cases

(Formerly 372k494.1, 372k494)

Telephone call by insurer's employee to employees of health care provider was intercepted in ordinary course of business, for purposes of determining applicability of "business extension" exception to Florida Security of Communications Act; entire call concerned charges by provider for services provided to insured patient. West's F.S.A. § 934.02(4)(a).

**[5] Telecommunications 372 ↪ 1440**

372 Telecommunications

372X Interception or Disclosure of Electronic Communications; Electronic Surveillance

372X(A) In General

372k1435 Acts Constituting Interception or Disclosure

372k1440 k. Persons Concerned; Consent. Most Cited Cases

(Formerly 372k498)

Insurer was not liable under Florida Security of Communications Act for unauthorized tape recording of telephone conversation with health care provider's employees where "business extension" exception to Act applied, and thus no "interception" as defined by Act occurred. West's F.S.A. §§ 934.02(3), (4)(a), 934.10.

**\*215** Arnold R. Ginsberg, Perse & Ginsberg, Miami, Fla., for plaintiff-appellant.

Carol A. Fenello, Kimbrell & Hamman, Miami, Fla., for defendant-appellee.

Appeals from the United States District Court for the Southern District of Florida.

Before COX and BIRCH, Circuit Judges, and GIBSON <sup>FN\*</sup>, Senior Circuit Judge.

FN\* Honorable Floyd R. Gibson, Senior U.S. Circuit Judge for the Eighth Circuit, sitting by designation.

PER CURIAM:

This is a diversity case in which plaintiff Royal Health Care Services, Inc. (Royal Health) sued defendant Jefferson-Pilot **\*216** Life Insurance Company (JP Life) pursuant to the Florida Security of Communications Act (the Act) <sup>FN1</sup> for the unauthorized recording of a telephone conversation. JP Life moved for summary judgment and the district court granted the motion. Royal Health appeals that determination.

FN1. Fla.Stat. Ann. §§ 934.01-934.43 (West Supp.1990).

**I. FACTS**

In September 1987 a JP Life employee who was in North Carolina called Royal Health's Miami, Florida office. The ensuing conversation was recorded pursuant to a JP Life policy that all outgoing calls from its case management department (which is responsible for ensuring that services to JP Life's insured are rendered in a cost-effective manner) be automatically recorded on a double-reeled tape recorder. The Royal Health employees who spoke with the JP Life employee were never told they were being recorded, and they never consented to such recording. JP Life's telephone system did, however, emit a periodic beep during the call. The call concerned a bill submitted to JP Life for a patient under the care of Royal Health.

**II. PROCEDURAL HISTORY**

Royal Health sued JP Life for unauthorized interception of an oral communication under section 934.10 of the Act. Royal Health sought compensatory and punitive damages. JP Life moved for summary judgment, contending that no interception took place. The district court granted JP Life's motion, holding that Royal Health had not established a genuine issue of material fact regarding an essential element of its case, that an interception took place.



924 F.2d 215  
(Cite as: 924 F.2d 215)

### III. CONTENTIONS AND ISSUE ON APPEAL

Royal Health argues that Florida law requires the consent of both parties to a telephone conversation before that conversation may be recorded and that because Royal Health's employees did not consent to being recorded, JP Life violated Florida law. Royal Health asserts that the Supreme Court of Florida's decision in *State v. Tsavaris*, 394 So.2d 418 (Fla.1981), controls the outcome of this case. JP Life asserts that because the business extension exception<sup>FN2</sup> applies to the phone call in question, no interception occurred under the Act, and therefore JP Life cannot be held liable.<sup>FN3</sup> We must decide if the district court was correct in its determination that no interception occurred in this case.

FN2. Fla.Stat. Ann. § 934.02(4)(a) (West Supp.1990).

FN3. JP Life makes other arguments we need not address because we will affirm on the issue of whether an interception took place under Florida law.

### IV. DISCUSSION

Summary judgment is appropriate "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." Fed.R.Civ.P. 56(c). There are no disputed issues of material fact here. The only controversy concerns the proper application of Florida law to those facts.

[1] The proper interpretation of the Act is a question of Florida law. Therefore, federal courts are required to construe the Act as would the Supreme Court of Florida. *Madara v. Hall*, 916 F.2d 1510, 1514 (11th Cir.1990); *Oriental Imports & Exports, Inc. v. Maduro and Curriel's Bank, N.V.*, 701 F.2d 889, 890-91 (11th Cir.1983). We begin with an examination of the statutory scheme, and then proceed to a review of the relevant case law.

[2] Royal Health alleges a claim under section 934.10 of the Act. That provision creates a civil remedy for "[a]ny person whose wire, oral, or electronic communication is intercepted ... in violation of [sections] 934.03-934.09." Fla.Stat. Ann. § 934.10 (West Supp.1990). To be liable to Royal Health, therefore, JP Life must have intercepted the phone call. "Intercept" is \*217 defined as "the aural or other acquisition of the contents of any wire, electronic, or oral communication through the use of any electronic, mechanical, or other device." Fla.Stat. Ann. § 934.02(3) (West Supp.1990). To intercept a communication, then, an "electronic, mechanical or other device" must be used. "Electronic, mechanical, or other device" is defined as:

(4) ... any device or apparatus which can be used to intercept a wire, electronic, or oral communication **other than:**

(a) Any telephone or telegraph instrument, equipment or facility or any component there- of:

1. Furnished to the subscriber or user by a provider of wire or electronic communication service in the ordinary course of its business and being used by the subscriber or user in the ordinary course of its business or furnished by such subscriber or user for connection to the facilities of such service and used in the ordinary course of its business....

Fla.Stat. Ann. § 934.02(4)(a) (West Supp.1990) (emphasis added).

The exception to the definition of "electronic, mechanical, or other device" is commonly referred to as the business extension exception or the extension phone exception. Under the plain meaning of the statute, if this exception is met, then no interception occurred and there can be no liability under section 934.10. The exception has two prongs. First, the communication must be intercepted by equipment furnished by a provider of wire or elec-

924 F.2d 215  
(Cite as: 924 F.2d 215)

tronic communication service in the ordinary course of its business. Second, the call must be intercepted in the ordinary course of business.

[3] Royal Health concedes that the telephone used by the JP Life employee was supplied by a provider of wire or electronic communication service (Southern Bell) in the ordinary course of its business.<sup>FN4</sup> Royal Health contends, however, that the interception was actually made by the tape recorder, not the telephone.<sup>FN5</sup> We disagree. We believe the telephone extension intercepted the call,<sup>FN6</sup> while the tape recorder recorded it. *State v. Nova*, 361 So.2d 411 (Fla.1978), supports our conclusion. There, the Supreme Court of Florida reviewed a case in which an employee's supervisor listened in to one of the employee's phone calls, but did not record the conversation. The court assumed that under the statute an interception could occur without the call being recorded and focused on the question of whether the call was made in the ordinary course of business. *Id.* at 413. Therefore, since a call need not be recorded to be intercepted, the phone extension must be the device that intercepts the call.<sup>FN7</sup> Federal case law interpreting the Federal Wiretap Act <sup>FN8</sup> lends further support to this conclusion. In *Epps v. St. Mary's Hospital, Inc.*, 802 F.2d 412 (11th Cir.1986), our circuit rejected the precise argument Royal Health advances here. In *Epps*, a hospital employee recorded a phone call between Epps and another hospital employee. The call was received through a telephone console and recorded by a double-reeled tape recorder. The court decided that the console, not the recorder, intercepted the call. *Id.* at 415. See also *United States v. Harpel*, 493 F.2d 346, 350 (10th Cir.1974) (where phone call is recorded by attaching suction cup to telephone receiver and connecting it to a tape recorder, telephone receiver is intercepting device, not recorder).

FN4. See Appellant's Brief at 9.

FN5. Royal Health made this argument to the district court, but timidly pursues it on appeal. See Appellant's Brief at 26-27.

Nevertheless, we have a practice of reading briefs liberally to ascertain the issues on appeal, *United States v. Milam*, 855 F.2d 739 (11th Cir.1988), and we will therefore address the argument.

FN6. Our use of the term "intercepted" here is in accordance with its common meaning, not as it is defined by the Florida statute we are examining. We conclude later in this opinion that under the statute, no interception took place.

FN7. See also *State v. Keaton*, 371 So.2d 86, 91 n. 7 (Fla.1979) (in dicta, Supreme Court of Florida indicated prosecution could be based on testimony of a person not a party to a telephone conversation, if the complainant listened in in the ordinary course of business).

FN8. 18 U.S.C.A. §§ 2510-2521 (West Supp.1990).

**\*218** [4][5] Having concluded that the telephone extension intercepted the call in this case, we next decide whether the call in question was intercepted in the ordinary course of business. That determination is an easy one. The recording occurred pursuant to a standard JP Life policy; Royal Health does not dispute this. Nor does Royal Health contend the call was personal in nature. A review of the transcript of the call reveals that the entire call concerned charges by Royal Health for services provided to a patient insured by JP Life. The only conclusion that may be drawn is that the call was intercepted in the ordinary course of business.

We conclude, therefore, that both prongs of the business extension exception are satisfied and that the exception applies. No interception, as defined by the Act, occurred and the district court was correct in granting JP Life's motion for summary judgment.

Once again *State v. Nova*, 361 So.2d 411 (Fla.1978)

924 F.2d 215  
(Cite as: 924 F.2d 215)

, supports our overall method of analysis. In that case, the court had to decide whether the trial court's determination that testimony of a murder victim's supervisor should not be suppressed was correct. The supervisor had listened in on a phone call that the victim received from the murderer while at work. The court proceeded exactly as we have in deciding whether an interception took place, first noting the definition of "intercept," then setting out the definition of "electronic, mechanical, or other device," and the business extension exception. The court then decided the call was intercepted in the ordinary course of business because the supervisor used the phone "for the benefit of her employer." *Id.* at 413. Therefore, the exception applied, no interception took place, and the trial court's decision not to suppress the testimony was vindicated.

Likewise, federal cases interpreting the Federal Wiretap Act have reached similar results. In *Briggs v. American Air Filter Co.*, 630 F.2d 414 (5th Cir.1980),<sup>FN9</sup> a supervisor listened in on a telephone extension to an employee's phone conversation. The employee sued under the Federal Wiretap Act provision that corresponds to the provision in the Florida Act that Royal Health sued under. The court affirmed the district court's determination that summary judgment should be granted in favor of the defendants because the business extension exception to the federal act was applicable. The analysis employed was the same common-sense analysis we employ in this case, beginning with the statutory definitions of the key terms and proceeding to a discussion of the business extension exception. The court concluded that because the act of listening in was in the ordinary course of business, the exception applied, and no interception took place.

FN9. In *Bonner v. City of Prichard*, 661 F.2d 1206, 1209 (11th Cir.1981) (*en banc*), this court adopted as binding precedent all decisions of the former Fifth Circuit handed down prior to October 1, 1981.

Royal Health, of course, takes issue with the district court's conclusion that under Florida law no interception took place. Royal Health's brief almost completely ignores the applicability of the business extension exception and instead calls our attention to the Supreme Court of Florida's decision in *State v. Tsavaris*, 394 So.2d 418 (Fla.1981). Royal Health contends that Florida law evinces a strong interest in the protection of the privacy of telephone calls and that this interest is evidenced by Florida's two-party consent rule.<sup>FN10</sup> Royal Health further argues that because federal law contains a single-party consent rule,<sup>FN11</sup> federal case law is inapposite in analyzing the Florida statute at issue.

FN10. Assuming no exception applies, under Florida law both parties to a phone call must consent before that call may be recorded. Fla.Stat. Ann. § 934.03(2)(d) (West Supp.1990). *See also Tsavaris*, 394 So.2d at 422-23.

FN11. *See* 18 U.S.C.A. § 2511(2)(d) (West Supp.1990).

We are convinced that *Tsavaris* does not require a different result than the one we reach. We agree that *Tsavaris* says that the Florida statute "evinces a greater concern for the protection of one's privacy interests in a conversation than does the \*219 [Federal Wiretap Act]." *Tsavaris*, 394 So.2d at 422. We also agree that Florida does indeed have a two-party consent rule. But we disagree with Royal Health's contention that all federal case law dealing with the Federal Wiretap Act is inapposite. The Historical Note that follows the legislative findings section of the Act <sup>FN12</sup> indicates that, "[w]ith one exception <sup>FN13</sup> the state law follows closely the federal act." In addition, the language of the Florida Act's business extension exception is **identical** to the language of the business extension exception in the federal Act.<sup>FN14</sup> Finally, were we to agree with Royal Health's contention that the call in question was intercepted because only one party consented to the recording, we would write the business extension exception out of the Florida Act. We see

924 F.2d 215  
 (Cite as: 924 F.2d 215)

no reason to assume the Florida Legislature intended the exception to be meaningless when the plain language of the Act indicates otherwise.<sup>FN15</sup> For these reasons, we find Royal Health's arguments unconvincing.

FN12. Fla.Stat. Ann. § 934.01 (West 1985).

FN13. The exception noted is not relevant to our discussion.

FN14. See *Horn v. State*, 298 So.2d 194, 198 (Fla. 1st Dist.Ct.App.1974) (noting similarity of Florida Security of Communications Act and Federal Wiretap Act).

FN15. Cf. *Briggs v. American Air Filter Co.*, 630 F.2d 414, 419 (5th Cir.1980) ("We do not believe Congress intended the exception to be superfluous, and therefore there must be some circumstances under which non-consensual interception falls within the 'ordinary course of business' exception.").

#### V. CONCLUSION

We therefore AFFIRM the district court's grant of summary judgment in favor of defendant Jefferson-Pilot Life Insurance Company.<sup>FN16</sup>

FN16. Royal Health's appeal of the district court's summary judgment decision is assigned case number 90-5204 in this court. Royal Health also appeals the district court's award of costs to JP Life, and that appeal is assigned case number 90-5514. In its Motion to Consolidate, appellant acknowledges that an affirmance in case number 90-5204 should prompt an affirmance in case number 90-5514. The judgment of the district court awarding costs to JP Life is therefore affirmed.

AFFIRMED.

C.A.11 (Fla.),1991.  
 Royal Health Care Services, Inc. v. Jefferson-Pilot Life Ins. Co.  
 924 F.2d 215

END OF DOCUMENT