O/a 10-6-87

FILED
SID J. WHITE
JUN 17 1987
CLERK, SUPREME COURT
By ____ Deputy Clerk

IN THE SUPREME COURT OF
THE STATE OF FLORIDA

WAYNE GOVAN, individually and on behalf of other similarly situated individuals,

Petitioner,

Case No.: 70,106

vs.

INTERNATIONAL BANKERS INSURANCE COMPANY,

Respondent.

INITIAL BRIEF OF PETITIONER

INGALSBE, McMANUS, WIITALA & CONTOLE, P.A.
Attorneys for Petitioner
P.O. Box 14125
North Palm Beach, FL 33408
(305) 627-1180

By ____
DAVID C. WIITALA

INDEX

	Page
TABLE OF CONTENTS	i
TABLE OF CITATIONS	ii
STATEMENT OF THE CASE	1
STATEMENT OF THE FACTS	5
SUMMARY OF ARGUMENT - POINT I	7
SUMMARY OF ARGUMENT - POINT II	9
ARGUMENT	
POINT I	11
WHETHER THE 4th DCA ERRED IN CONSTRUING FLA. STAT. 627.739(2) (1983) TO REQUIRE THAT ANY PIP DEDUCTIBLE BE SUBTRACTED FROM 80% OF MEDICAL BILLS INCURRED, RATHER THAN FROM 100% OF THE TOTAL MEDICAL BILLS INCURRED.	
POINT II	17
WHETHER THE 4TH DCA ERRED IN REVERSING THE CLASS ACTION JUDGMENT ON GROUNDS PETITIONER DID NOT FILE A MOTION FOR CLASS CERTIFICATION UNTIL AFTER HE HAD OBTAINED A FAVORABLE RULING ON THE MERITS.	
CONCLUSION	21
CERTIFICATE OF SERVICE	22

TABLE OF CITATIONS

	Page
Atlas Mutual v. Wolfort, 12 FLW 1175 (4th DCA 1/15/87)	11
Candy H v. Redemption Ranch Inc., 563 F.Supp.505 (M.D. Ala. 1983)	18
Charter Oak Insurance Company v. Regalado, 339 So.2d 277 (Fla. 3rd DCA, 1976)	12
Farley v. Gateway Insurance Co., 302 So.2d 177 (Fla. 2nd DCA 1974)	12
Industrial Fire & Casualty Insurance Co. v. Cowan, 364 So.2d 810 (Fla. 3rd DCA 1978)	8, 11
International Bankers Insurance Company v. Govan, 502 So.2d 913 (Fla. 4th DCA 1986)	3, 6
Steinberg v. Fusari, 364 F.Supp. 922 (D.C. Conn. 1973); 419 U.S. 379, 42 L.Ed.2d 521 (1975)	19
Styles v. Y.D. Taxi Corp., Inc., 426 So.2d 1144 (Fla. 3rd DCA 1983)	13
Susman v. Lincoln American Corp., 587 F.2d 866 (CA 7 Ill. 1978)	18
Thibodeau v. Allstate, 391 So.2d 805 (Fla. 5th DCA 1980)	8, 11
United States Parole Commission v. Geraghty, 100 S.Ct. 1202 (1980)	20
Zeidman v. J. Ray McDermott & Company, 651 F.2d 1030 (CA 5 La. 1981)	18
OTHER AUTHORITIES	
Section 627.636(4)(f)	8
Section 627.730-741 F.S.	13
Section 627.731 F.S. (1982)	7
Section 627.736(1)(a) F.S. (1982)	6

OTHER AUTHORITIES - CONTINUED

	Page
Section 627.736(4)(f) F.S.	14, 15
Section 627.739 F.S. (1983)	7, 11
Section 627.739(2) F.S. (1983)	11
Fla.R.Civ.P. 1.220	3

STATEMENT OF THE CASE

This is an appeal from an order of the 4th DCA reversing a final judgment of the trial court.

The Petitioner/Plaintiff, as an insured under a personal injury protection insurance policy issued by the Respondent/ Defendant, initiated his action below on May 7, 1984, in a two count complaint, seeking in Count I, a declaratory judgment, and in Count II, monetary damages for benefits claimed due under his policy (R 1-9).

The Respondent's personal injury protection insurance policy provided statutory coverage for automobile accident related medical bills and lost wages, subject to a $2,000.00 deductible (R 1-9, Exhibit A). Count I of the Petitioner's complaint alleged that Respondent was utilizing a method of calculating the PIP benefits due him in a manner contrary to that required by statute, and requested that the Court adjudicate the proper method of computing the benefits to which he was entitled.

Specifically, the Petitioner alleged Respondent was obliged to pay him, up to the policy limits, 80% of all medical bills in excess of his $2,000.00 deductible, whereas the Respondent claimed the correct computation of benefits payable was arrived at, by first computing 80% of the plaintiff's medical bills and then subtracting the deductible with the resulting figure representing the benefits payable. In its answer,

Respondent admitted issuance of the PIP policy with a $2,000.00 deductible, and that it was obliged to pay benefits in accordance with the Florida Automobile Reparations Reform Act. Respondent denied that its method of calculating those benefits was incorrect.

Petitioner, Govan, filed a request for admission on June 19, 1984, requesting Respondent, International Bankers Insurance Company, to admit it had computed in the past, and intended to compute in the future, Petitioner's entitlement to PIP benefits in the manner set forth in Respondent's letter of April 13, 1984, attached to the complaint as exhibit "D" (R 12). This request was admitted by Respondent on July 9, 1984 (R 15).

At the deposition of Respondent's adjuster, Janice Loving, on August 9, 1984, Petitioner learned Respondent applied the same improper calculation of benefits to all PIP claims submitted by its insureds. Petitioner then filed a motion for order determining class representation which was filed with the trial court on August 16, 1984 (R 23).

This motion was noticed for hearing on September 5, 1984, but because Judge Kapner left the bench on September 1, 1984, a hearing date was not obtained until November 7, 1984. At this hearing, Respondent contended the class action claim was moot by virtue of the final declaratory judgment in favor of Petitioner on his declaratory judgment claim, and by virtue of

Respondent having tendered the remainder of its PIP policy limits to Petitioner prior to the August 22, 1984 hearing on the summary judgment motion (R 102 - 105).

On January 16, 1985, Circuit Judge Walter C. Colbath entered an order granting Petitioner's motion for order determining class representation and finding the class described in Plaintiff's class representation claim is proper under Florida Rule of Civil Procedure 1.220 (R 102-105).

Hearing on Petitioner's motion for summary judgment on his individual claim had been held on August 22, 1984 before Judge Kapner (R 120-134), who orally ruled in Petitioner's favor, but mistakenly entered two conflicting summary judgments. An amended final summary judgment was later signed by Judge Colbath and filed on November 1, 1984 (R 34-35).

Following non-jury trial, Judge Colbath entered a final judgment on November 8, 1985, in favor of Petitioner on the issue of the proper method of calculating the PIP benefits. The final judgment also found this was a proper class action and ruled in favor of the Plaintiff class on the issue of the appropriate method of calculating benefits under PIP policies.

The Fourth District Court of Appeal in International Bankers Insurance Company v. Govan, 502 So.2d 913 (Fla. 4th DCA 1986) reversed the trial court, both as to the proper method computing the PIP benefits and as to the propriety of the class

action. The Fourth District ruled the PIP benefits should be computed as urged by Respondent, and, without discussion or citation, reversed that portion of the trial court's final judgment allowing this action to proceed as a class action, on grounds the Appellee did not file a motion for class certification until after he had obtained a favorable ruling on the merits. Govan, supra, page 914.

Petitioner timely filed a notice to invoke this Court's discretionary jurisdiction, and this Court did accept jurisdiction.

STATEMENT OF THE FACTS

The Petitioner, WAYNE GOVAN, was injured in a motor vehicle accident on February 6, 1984, and incurred medical expenses in the amount of $5,887.00, which he submitted to Respondent for payment under the PIP provisions of his policy. The policy provided the statutory coverage limits, i.e., 80% of medical bills and 60% of loss of earnings, to a maximum of $10,000.00 with a $2,000.00 deductible (R 1-9 and Exhibit A thereto).

Respondent paid $2,709.96 of the medical bills submitted by Petitioner, according to the following formula:

$5,887.45	-	Plaintiff's total medical bills
x 80%	-	Statutory percentage of medical bills payable pursuant to §627.736(1)(a) F.S. (1982)
$4,709.96	-	Benefits otherwise due but for deductible
-2,000.00	-	Deductible
$2,709.96	-	Benefits payable

(R 1-9, Exhibit D)

Respondent took the position in the lower court that the applicable deductible of a PIP insurance policy was to be subtracted from 80% of an insured's medical bills in calculating the benefits to be paid. Petitioner that the benefits due an insured under a PIP insurance policy containing a deductible were calculated as follows:

$5,887.45	-	Plaintiff's total medical bills
-2,000.00	-	Deductible
$3,887.45	-	Benefits otherwise due
x 80%	-	Statutory percentage of medical bills payable pursuant to §627.736(1)(a) F.S. (1982)
$3,109.60	-	Benefits payable

(R 120-134)

In the final order and judgment, the trial court approved of the Petitioner's method of calculating the benefits, finding that the total amount of an insured's medical bills is the amount "otherwise due" under a personal injury protection policy from which is subtracted the deductible, (R 261-263) and also approved the class action aspect of the suit and found in favor of the Plaintiff class.

The 4th DCA reversed the trial court's judgment on both issues in an opinion at 502 So.2d 913 (Fla. 4th DCA 1986).

SUMMARY OF ARGUMENT

POINT I ON APPEAL

F.S. 627.731 (1982) explicitly states the purpose of the No Fault Act is, "...to require medical, surgical, funeral and disability benefits to be provided without regard to fault under motor vehicle policies...". Respondent's position would limit the providing of medical and disability benefits by, in effect, increasing the deductible and decreasing the benefits available to an insured. Construing the statute in the manner urged by Petitioner would further the stated express purpose of the act.

A common sense reading of the statute tells this Court, as it did Judges Kapner and Colbath below, that a person who buys a PIP policy paying 80% of his bills, and chooses a $2,000.00 deductible, expects to have 80% of his bills in excess of $2,000.00 paid by his insurance company. Both trial judges specifically adopted this line of reasoning (R 262; R 132). This Court should hold Fla. Stat. 627.739 creates a, "garden variety" deductible and that the 80% figure and the deductible have to both be applied to the total amount of bills incurred.

If there is more than one reasonable interpretation, the statute should be construed to provide the maximum coverage, since the purpose of the No Fault Act is to broaden insurance coverage.

This Court should follow Thibodeau v. Allstate, 391 So.2d 805 (Fla. 5th DCA 1980) and Industrial Fire & Casualty Insurance Co. v. Cowan, 364 So.2d 810 (Fla. 3rd DCA 1978) to the extent they hold the insurance company must pay 80% of all medicals incurred beyond the amount of the deductible. The Court should reject Thibodeau and Cowan insofar as they hold the insurance company's total exposure is limited to the difference between the deductible selected and the $10,000.00 statutorily required coverage, as the insurance company is allowed a, "double deductible" under the reasoning of Thibodeau and Cowan.

The Court should hold an insurance company has no liability for the amount of the deductible, but after the deductible has been passed, it must pay 80% of all medical bills and 60% of lost wages until it has paid out a total of $10,000.00.

This interpretation gives full effect to the medical payments provisions of Fla. Stat. 627.636(4)(f) which requires the carrier to pay that portion of any claim for PIP medical benefits which is otherwise covered by PIP but not payable due to the 20% co-insurance provision. Respondent's interpretation of the statute creates a gap where medical expenses in excess of the amount of the deductible selected are not covered by either PIP or medical payments.

SUMMARY OF ARGUMENT

POINT II

Petitioner timely filed and diligently pursued his class action claim, and his motion for certification of the class should not be denied simply because the trial court's calendar resulted in adjudication of a motion for final summary judgment on the individual claim before hearing on Petitioner's motion for class certification.

The Fourth DCA erred in reversing the trial court judgment establishing and finding in favor of the plaintiff class because the motion for class certification was filed prior to adjudication of the individual summary judgment, and the motion for class action certification was also filed within one month of Respondent's answer to the complaint.

Petitioner's claim for a class action should further be allowed to proceed, despite the mootness argument, because the issue sought to be adjudicated herein will reoccur and may well evade review in the future if Petitioner's class action motion is not granted.

Judge Colbath correctly found Petitioner's claim was not moot because he still had a personal stake in the unresolved issue of his entitlement to attorney's fees and costs payable by the Respondent. Further, Defendant's tender of full damages to Petitioner does not impair or make inadequate his status as a class representative. Were it not for this tender, Count II of

Petitioner's complaint would have been unresolved at the time of seeking the class representation.

These claims are also particularly well suited to class action status because each claim can be easily arithmetically determined; each claim subject to a $2,000.00 deductible is entitled to a maximum recovery of $400.00; a $1,000.00 deductible yields a maximum recovery of $200.00 and a $500.00 deductible results in a maximum recovery of $100.00. The issues of law and fact are common to all class members and a class action is the most efficient way to resolve the individual claims.

ARGUMENT

POINT I

WHETHER THE 4th DCA ERRED IN CONSTRUING FLA. STAT. 627.739(2) (1983) TO REQUIRE THAT ANY PIP DEDUCTIBLE BE SUBTRACTED FROM 80% OF MEDICAL BILLS INCURRED, RATHER THAN FROM 100% OF THE TOTAL MEDICAL BILLS INCURRED.

F.S. 627.739 (1983) provides that any PIP deductible selected by an insured shall be deducted from, "... the amounts otherwise due ..." each person subject to the selection. The 4th DCA, in the Govan case under review, held the term "amounts otherwise due" refers to the 80% of the bills that are payable by PIP insurance. The 4th DCA recently adhered to Govan in Atlas Mutual v. Wolfort, 12 FLW 1175 (4th DCA 1/15/87).

In the cases of Industrial Fire & Casualty Insurance Co. v. Cowan, 364 So.2d 810 (Fla. 3rd DCA 1978) and Thibodeau v. Allstate, 391 So.2d 805 (Fla. 5th DCA 1980) the 3rd and 5th districts held the term "amounts otherwise due" refer to the statutorily required limits of PIP coverage.

The trial judge agreed with Petitioner's position and held the 80% and the deductible must both be applied to the same figure, i.e., the amount of medical bills incurred. The trial court reasoned it was inconceivable that an insured who selected a $2,000.00 deductible, would not expect to collect 80¢ of every dollar in medical expenses incurred beyond the amount of the deductible (R 261).

As pointed out by the Department of Insurance's amicus brief in the 4th DCA, the Court has three possible interpretations of the statute: (1) The insurance company has no liability for the amount of the deductible, but after the deductible has been passed, it must pay 80% of all medical bills and 60% of lost wages until it has paid out a total of $10,000.00; (2) The insurance company has no liability for the amount of the deductible, but after medical bills and lost wages exceed the deductible, it must pay 80% of medicals and 60% of lost wages until it has paid out a total of $8,000.00 ($10,000.00 required coverage minus the $2,000.00 deductible); (3) The insurance company has no liability until the total of 80% of medical bills and 60% of lost wages incurred exceeds its deductible. It must then pay 80% of medicals and 60% of lost wages until such payments total $10,000.00 or, under Cowan and Thibodeau, until the payments equal the difference between $10,000.00 and the deductible.

The No Fault Act is intended to broaden insurance coverage, Charter Oak Fire Insurance Co. v. Regalado, 339 So.2d 277 (Fla. 3rd DCA, 1976) and Farley v. Gateway Insurance Co., 302 So.2d 177 (Fla. 2nd DCA 1974). The broadest interpretation of the statute (option 1 above) would require an insurance company to pay 80% of all medical and 60% of all lost wages incurred, after the sum of medicals and lost wages exceeds the amount of the deductible, and to continue these payments until the insurance company has paid a total of $10,000.00 (the

statutorily required coverage). This interpretation is most consistent with the stated purpose of the No Fault Act found in Fla. Stat. 627.731 (1983) which holds the purpose of the No Fault Act is to provide for medical, surgical, funeral and disability insurance benefits without regard to fault. This interpretation provides the greatest amount of benefits.

Since, at common law, an injured party has the right to look to the tort feasor for 100% of his medicals and lost wages, this interpretation minimizes the statutory intrusion on an injured party's common law right of action in tort. The No Fault Statute (F.S. 627.730-741) is a statutory limitation on a common law right of action, and it must be strictly construed to conform the statute as nearly as possible to the common law. Styles v. Y.D. Taxi Corp., Inc., 426 So.2d 1144 (Fla. 3rd DCA 1983).

The second option would be to hold the insurance company has no exposure for the amount of deductible selected, but must pay 80% and 60% of losses thereafter, until it has paid out a sum equal to $10,000.00 minus the deductible selected ($2,000.00 in this case). This option is consistent with the 3rd and 5th District holdings in Cowan and Thibodeau, supra. However, this option allows the insurance company a "double deductible" in that the insurance company avoids responsibility for the initial amount of the deductible selected, and also limits its total

exposure for any single claim to the sum of $10,000.00 minus the amount of the deductible.

Both the above options give full effect to the medical payments provisions of Fla. Stat. 627.736(4)(f) which requires the carrier to pay the portion of any claim for PIP medical benefits which is otherwise covered by PIP but not payable due to the 20% co-insurance provision, and which states that medical payments insurance benefits shall not be payable for the amount of any deductible which has been selected. Under Respondent's interpretation of the statute (adopted by the 4th DCA), there is a gap where medical expenses in excess of the amount of the deductible selected are covered neither by PIP nor med pay. That is, a person with a $2,000.00 deductible who incurs $2,500.00 in medical bills, under the 4th DCA interpretation of the statute, has no PIP or med pay coverage for the $500.00 difference between the $2,000.00 deductible and the $2,500.00 of bills incurred. The above medical payment statute clearly intends that an insured may obtain 100% coverage of medical bills beyond the amount of the deductible by purchasing medical payments coverage. Respondent's interpretation of the deductible cannot be reconciled with the medical payments statute.

As noted by the trial court in its final judgment, Respondent's suggested interpretation would have the effect of increasing the deductible and decreasing the benefits available to the insured.

When the deductible was first permitted in the 1971 version of Fla. Stat. 627.739, 100% of bills incurred were payable, so the term, "amounts otherwise due" clearly referred to 100% of the bills incurred. While the Cowan and Thibodeau, supra, courts held otherwise, an expansive interpretation of the statute supports the conclusion the legislature intended that all PIP policies, whether or not a deductible is selected, must provide PIP coverage up to the statutorily required figure. Cowan and Thibodeau, supra, held the insurance company need only pay up to the difference between the statutorily required coverage limit and the amount of its deductible.

When the PIP statute was amended in 1977 to insert the co-insurance clause, requiring the insured to bear a portion of his losses, the legislature did not change the wording of the, "benefits otherwise due" section of 627.739. This supports the conclusion that the legislature did not intend to change the applicability of the deductible and that all losses in excess of the deductible are paid by PIP, although at an 80% rate instead of 100%. Enactment of the medical payments statute, F.S. 627.736(4)(f), afforded the insured the opportunity to obtain 100% coverage of his bills in excess of his deductible. (See Department of Insurance's amicus brief, 4th DCA, page 14-17).

Unless it is clear from the statutory language that the legislature intended otherwise, the Court should construe

the provisions of Fla. Stats. 627.736 and 627.739 in a common sense manner and hold that 627.739 creates a "garden variety" deductible, where 100% of wages and medical losses incurred are applied toward the deductible, and that 80% of all medical and 60% of wage losses incurred after the deductible are covered by the policy. The undersigned has not found anywhere else in the Insurance Code, Chapter 627, Florida Statutes, where the statute permits a deductible to be subtracted from the benefits payable rather than from the amount of the loss.

POINT II

WHETHER THE 4TH DCA ERRED IN REVERSING THE CLASS ACTION JUDGMENT ON GROUNDS PETITIONER DID NOT FILE A MOTION FOR CLASS CERTIFICATION UNTIL AFTER HE HAD OBTAINED A FAVORABLE RULING ON THE MERITS.

The trial court's order of January 10, 1985 granting Plaintiff 's motion for an order determining and allowing this action to proceed as a class action, properly disposed of Defendant's contention that the class action proceeding was improper because the individual claim was moot. Judge Colbath found: (1) The individual Plaintiff's claim was not moot because he still had an ongoing personal claim for costs and attorney's fees which had not been adjudicated (R 103); and

(2) Plaintiff's individual claim was not moot because Count II of the complaint for payment of PIP bills already incurred and submitted to Defendant would still be outstanding and unresolved but for the fact that Defendant voluntarily tendered its PIP policy limits during the pendency of the lawsuit (R 103).

The record affirmatively shows that Plaintiff's motion for class certification was filed with the court on August 17, 1984. Not until August 28, 1984 was the first of the two conflicting final summary judgments entered by Judge Kapner, and not until November 1, 1984 was the amended final summary judgment entered. Respondent's answer to the complaint was not filed

until July 16, 1984, so within one month of the filing of the answer, Petitioner moved for an order determining class representation. The record therefore affirmatively demonstrates Petitioner's claim was not moot at the time of filing the class action claim and that Judge Colbath correctly certified the class.

Even if this Court finds the individual Petitioner's claim had become moot, there is a well recognized exception to the rule that moot cases will be dismissed, that applies to class actions in which the named plaintiff's claim becomes moot before full adjudication of substantive issues where the class has been certified prior to mooting of plaintiff's claims. Candy H vs. Redemption Ranch, Inc., 563 F.Supp. 505 (M.D. Ala. 1983).

Any mootness of plaintiff's claim, artifically created by defendant making plaintiff whole, does not defeat a class action after a motion for class certification has been made and pursued with reasonable diligence and is pending before the court. Susman v. Lincoln American Corp., 587 F.2d 866 (CA 7 Ill. 1978). A suit brought as a class action should not be dismissed for mootness upon tender by defendant to the named plaintiff of his personal claims, at least when there is a pending motion for class certification which has been diligently pursued. Zeidman vs. J. Ray McDermott & Company, 651 F.2d 1030 (CA 5 La. 1981).

The class should be permitted to proceed for the further reason that the type of claim advanced by Petitioner (manner and method of computing PIP benefits) will constantly reoccur in all

PIP claims filed by Respondent's insureds, yet the issue could continually evade review if this class action is declared moot by defendant simply making each potential class plaintiff whole by payment of their claim. The fact that this individual Petitioner's claim had been adjudicated in his favor before certification of the class does not moot the class action since there are numerous class members who have either had their PIP benefits improperly computed and paid in the past, or who will be subject to like treatment in the future. At stake is a maximum of $400.00 per claimant subject to a $2,000.00 deductible.

Respondent has not taken the position or admitted that it will conduct its future business practices in accordance with the final summary judgment in this case, nor has Respondent admitted it will correct past violations. Therefore, this case presents a perfect example of a situation where the circumstances and the possibility that the issue involved would evade review, calls for relation back of the class certification claim to the filing of the individual complaint. Steinberg vs. Fusari, 364 F.Supp. 922 (D.C. Conn. 1973), vacated on other grounds 419 U.S. 379, 42 L.Ed.2d 521 (1975).

It should also be pointed out that Petitioner had no basis for filing his class action claim until August 9, 1984, the date of the deposition of Respondent's adjuster/representative. It was at that deposition that Respondent's representative testified they have handled all PIP claims in the same manner as

they were handling Petitioner's. Petitioner is clearly pursuing his class action diligently.

The Supreme Court case of United States Parole Commission v. Geraghty, 100 S.Ct. 1202 (1980) specifically holds that an action brought on behalf of a class does not become moot upon expiration of the named plaintiff's substantive claim. In Geraghty, the named plaintiff was a former federal prisoner and he was permitted to continue to appeal the trial court's order denying class certification even though he was released from prison while the appeal was pending.

It would do nothing but exalt form over substance to deny Petitioner's class action claim on grounds of mootness. Petitioner filed his class action claim within two weeks of deposing Respondent's representative, and if it had not been for the confusion and calendar delays engendered by Judge Kapner's leaving the bench, Petitioner probably would have had a ruling on his class action claim prior to final summary judgment being entered on his declaratory action claim. Obviously no judicial purpose is served by denying the class action claim solely because of scheduling limitations imposed by the court's calendar. Petitioner has clearly timely and diligently filed and pursued his class action claim and he is entitled to a decision on the merits of the class action claim.

CONCLUSION

The Court should reverse the 4th DCA and affirm the trial court's final order providing Respondent must pay 80% of all medical bills incurred by Petitioner beyond the $2,000.00 deductible until a total of $10,000.00 has been paid out.

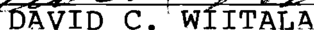
The Court should also reverse the 4th DCA and affirm the trial court's order allowing a class action and finding in favor of the plaintiff class.

The Court should grant Petitioner's motion for appellate attorney's fees and remand to the trial court for determination of a reasonable appellate fee.

CERTIFICATE OF SERVICE

I DO HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. mail to Larry Klein, Esquire, Suite 503, Flagler Center, 501 South Flagler Drive, West Palm Beach, FL 33401; Richard Kupfer, Esquire, P.O. Box 3466, West Palm Beach, FL 33402; Michael Richmond, Esquire, Nova Law Center, 3100 S.W. 9th Avenue, Fort Lauderdale, FL 33315; Jack W. Shaw, Jr., 1500 American Heritage Life Building, Jacksonville, FL 32202; Shelley Leinicke, Esquire, P.O. Box 14460, Fort Lauderdale, FL 33302; Marjorie Gadarian Graham, Esquire, P.O. Drawer E, West Palm Beach, FL 33402; Don Dowdell, Esquire, 2124 Deerfield Drive, Tallahassee, FL 32308 and Brian J. Deffenbaugh, Esquire, FL Department of Insurance, Larson Building, Suite 413-B, Tallahassee, FL 32301, this 17th day of June, 1987.

INGALSBE, McMANUS, WIITALA &
CONTOLE, P.A.
Attorneys for Petitioner
P.O. Box 14125
North Palm Beach, FL 33408
(305) 627-1180

By 
DAVID C. WIITALA