

IN THE SUPREME COURT OF THE STATE OF FLORIDA

CASE NO. SC22-735
LT CASE NO. 21-10559

ALLSTATE INSURANCE COMPANY, ET AL.,

Appellants,

vs.

REVIVAL CHIROPRACTIC, LLC,

Appellee.

ANSWER BRIEF OF APPELLEE

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INTRODUCTION

Recently there has been unnecessary “confusion” on the part of insurers regarding what § 627.736, Fla. Stat. (the “PIP statute”) requires a PIP insurer to reimburse when it has elected to calculate reimbursement of PIP expenses pursuant to a schedule of maximum charges set forth in § 627.736(5)(a)1., Fla. Stat. (the “Schedule”). The issue before the Middle District of Florida (the “district court”) and the Eleventh Circuit Court of Appeal was whether Allstate, whose policy *exclusively elected* the Schedule as its payment methodology (as opposed to a “limit” or “cap” on reimbursements), and who *exclusively relied* on the Schedule to calculate PIP reimbursements violated § 627.736(5)(a)2.-5., Fla. Stat. when it reduced Revival’s submitted charges that were less than the Schedule, and in some cases less than 80% of the Schedule, to 80% of the charge submitted instead of paying those lesser charges at 80% of the Schedule or, if the charge submitted was less than 80% of the Schedule, in the amount of the charge submitted. The district court correctly held that Allstate’s unauthorized reimbursement methodology – reducing reimbursement of charges that are less than the Schedule to 80% of the charge submitted – directly conflicts with the express

requirements set forth in § 627.736(5)(a)1.-5., Fla. Stat., and any policy provision to the contrary impermissibly provides less coverage than the minimums required by the PIP statute.

Since its ruling, Florida's Fourth and Fifth District Courts of Appeal have both confirmed the district court's interpretation of the PIP statute. See *Geico Indem. Co. v. Muransky Chiropractic P.A.*, 323 So. 3d 742, 747 (Fla. 4th DCA 2021) ("In other words, under the PIP statute, if the billed amounts are less than 80% of the fee schedule, the insurer may pay the billed amounts in full or pay the 80% reimbursement rate of maximum charges."); *Hands on Chiropractic PL a/a/o John Wick v. Geico Gen. Ins. Co.*, 327 So. 3d 439, 443 (Fla. 5th DCA 2021) ("We noted that the 'amount allowed' under subparagraph 1. of section 627.736(5)(a) is not 200 percent of that schedule; rather, it is a fraction of that, namely 80 percent of 200 percent of the applicable fee schedule. *Id.* at 984. 'Accordingly, if the billed amount is less than 80 percent of [200 percent of] the fee schedule (the required amount an insurer must pay), the insurer may opt to pay the lower billed amount in full.' *Id.* Nowhere in *Irizarry* does it say that the insurer may pay 80 percent of a billed amount.").

Since the opinions in *Muransky* and *Wick*, this Court issued its decision in *MRI Assocs. of Tampa v. State Farm Mut. Auto. Ins. Co.*, 334 So. 3d 577 (Fla. 2021) (“*MRI Assocs. II*”). Allstate and other similarly situated insurers have attempted to argue that *MRI Assocs. II* directly bears on the issue in this case. This is simply not true. *MRI Assocs. II* did not concern an insurance policy that elected the Schedule as the *exclusive* method of calculating reimbursement of PIP charges, did not concern submitted charges that were less than the Schedule, and this Court noted that the provisions of § 627.736(5)(a)2.-5., Fla. Stat. governed an insurer’s reliance on the Schedule but did not address or construe those requirements. Simply stated, *MRI Assocs. II* addresses the notice an insurer is required to provide in order to rely on the Schedule, not what the PIP statute requires when an insurer chooses to rely on the Schedule. Contrary to the Eleventh Circuit’s opinion, there is no confusion or uncertainty created by this Court’s opinion in *MRI Assocs. II*.

After the Eleventh Circuit certified its question in this case, the Second District issued its opinion in *Progressive Am. Ins. Co. v. Back on Track, LLC*, 342 So. 3d 779 (Fla. 2d DCA 2022) certifying conflict with *Muransky* and *Wick*. First, it is important to note that even the Second

District concluded that “the issue presented in [*MRI Assocs. II*] differed from the issue we now consider.” The Second District’s disagreement with the Fourth and Fifth Districts’ conclusions came down to its own interpretation of § 627.736(5)(a)1. and 5., Fla. Stat.

The Fourth and Fifth Districts’ interpretations of the PIP statute are based on its plain, clear and unambiguous language as applied to the insurance policy’s election *and* the insurer’s actions. Those courts correctly held that if an insurer elects and relies on the Schedule to calculate reimbursements, like Allstate has done in this case, § 627.736(5)(a)2.-5., Fla. Stat. requires the insurer to reimburse the charges submitted at 80% of the applicable fee schedule, with the only *permissive* exception being if the charge submitted is less than 80% of applicable fee schedule, in which case the insurer “*may*” pay the amount of the charge submitted.

As such, it is respectfully asserted that the only answer to the Eleventh Circuit’s certified question is “no.” Alternatively, as will be demonstrated below, Revival posits that the certified question should be rephrased based on the arguments presented, the language of Allstate’s insurance policy, and Allstate’s decision to rely exclusively on the Schedule to calculate reimbursements but to pay submitted

charges that are less than the Schedule at 80% of the charge submitted. The rephrased certified question should be answered by concluding that when Allstate elected and relied on the Schedule to calculate reimbursements, it was required to reimburse all expenses at 80% of the Schedule and submitted charges that are less than 80% of the Schedule in the amount of the charge submitted.

STATEMENT OF THE FACTS AND OF THE CASE

A. The PIP Statute's Reimbursement Options

Section 627.736(1)(a), Fla. Stat. requires all PIP insurers to pay “eighty percent of all reasonable expenses” for medically necessary services up to \$10,000. This has become known as the “reasonableness mandate.” Through various amendments over the years, the PIP statute currently provides only two reimbursement options for insurers to satisfy the reasonableness mandate: (1) the default method, which is the longstanding “fact-specific analysis of whether a health care provider’s charges are reasonable” as set forth in § 627.736(5)(a), Fla. Stat.,¹ or alternatively, (2) the permissive

¹ Section 627.736(5)(a)1., Fla. Stat. (2012) (“The insurer may limit reimbursement to 80% of the following schedule of maximum charges...”). *See also, Muransky*, 323 So. 3d at 747 (“The Florida PIP statute authorizes insurers to limit reimbursement to 80% of an

method, which includes the schedule of maximum charges set forth in in § 627.736(5)(a)1.a.- f., Fla. Stat., commonly referred to as the “Schedule.” For an insurer to limit PIP reimbursements pursuant to the Schedule, an insurer must provide notice in its policy of its intent to do so. § 627.736(5)(a)5., Fla. Stat.² If an insurer provides notice of its intent to limit reimbursements pursuant to the Schedule it may use the schedule as a cap on otherwise reasonable charges. If, however, an insurer provides notice in its policy that it will calculate and determine reimbursements based on the Schedule and thereafter does exactly that in practice for all charges submitted in amounts above the Schedule the insurer must reimburse charges submitted pursuant to the specific and applicable schedule set forth in § 627.736(5)(a)1.a.-f., Fla. Stat. §§ 627.736(5)(a)1., and (5)(a)5., Fla. Stats.³

amount set by a fee schedule, *see* § 627.736(5)(a)1.a.- f., by electing to do so in its policy, *see* § 627.736(5)(a)5.”).

² Section 627.736(5)(a)5., Fla. Stat. (2012) (“An insurer may limit payment as authorized by this paragraph only if the insurance policy includes a notice at the time of issuance or renewal that the insurer may limit payment pursuant to the schedule of charges specified in this paragraph.”).

³ Of note, the issue presented in this case is not present under § 627.736(5)(a), Fla Stat. as the reasonableness of the charges are based upon a fact- based analysis and determination. There is no

It is “axiomatic that all parts of a statute must be read together in order to achieve a consistent whole.” *Forsythe v. Longboat Key Beach Erosion Control Dist.*, 604 So. 2d 452, 455 (Fla. 1992). This Court is required to give effect “to every word, phrase, sentence, and part of the statute if possible, and words in a statute should not be construed as mere surplusage.” *Am. Home Assur. Co. v. Plaza Materials Corp.*, 908 So. 2d 360, 366 (Fla. 2005). A court is to “presume that a legislature says in a statute what it means and means in a statute what it says there.” *MRI Assoc. II*, 334 So. 3d at 583.

The Fifth District’s opinion in *Geico Indem. Co. v. Accident & Injury Clinic, Inc. a/a/o Frank Irizarry*, 290 So. 3d 980 (Fla. 5th DCA 2019) was the first case to address what an insurer was required to reimburse when it elected the Schedule as the method for calculating reimbursements. In that case, the Fifth District explained that if an insurer provides the statutorily required notice of its intent to calculate reimbursements pursuant to the Schedule, and chooses to calculate reimbursement pursuant to the Schedule, 80% of the

fixed schedule or rate by which a charge could be considered less than.

Schedule is “the required amount an insurer must pay.” *Id.* at 984 (emph. added). The only exception to paying this “required amount” is if a charge submitted is less than 80% of the Schedule, in which case the insurer “may pay the amount of the charge submitted” instead of 80% of the Schedule. § 627.736(5)(a)1. and (5)(a)5., Fla. Stats. (“If a provider submits a charge for an amount less than the amount allowed under subparagraph 1. [80% of the Schedule], the insurer may pay the amount of the charge submitted.”) (bold added). *Id.*

The Fourth and Fifth District Courts of Appeal have now both uniformly interpreted § 627.736(5)(a)2.-5., Fla. Stat. reimbursement requirements and confirmed that there is no additional reimbursement option for insurers like Allstate who provide notice and choose to calculate reimbursement pursuant to the Schedule. They *cannot further reduce the reimbursement of charges that are less than the Schedule to 80% of the charge submitted*. See *Wick*, 327 So. 2d at 443 (“We concluded in *Irizarry* that the circuit court was correct when it stated there was nothing in the applicable statute that allowed Geico to limit its payment to 80 percent of [a charge that is less than the Schedule.]”); *Muransky*.

B. The Respective Claims

Jazmine Padin and Natalie Rivera were both insured pursuant to separate insurance policies issued by Allstate. (Dkt. #26) Allstate has stipulated that the subject insurance policies “contain a notice pursuant to § 627.736(5)(a)5., Fla. Stat. that Allstate would ‘limit payment pursuant to the schedule of charges specified’ in Florida Statutes § 627.736(5).”⁴ (Dkt. #26 at 1-3) Allstate’s insurance policy does not include the § 627.736(5)(a), Fla. Stat. factors in its definition of reasonable charges.⁵

⁴ The respective insurance policies are included in the record. (Dkt. #26-1)

⁵ Allstate’s PIP insurance policy provision (through an amendatory endorsement) states in relevant part as follows:

IV. Part III – Personal Injury Protection Coverage – Coverage VA is amended as follows:

A. The Personal Injury Protection Coverage – Coverage VA insuring agreement is replaced by the following:

In accordance with the Florida Motor Vehicle No-Fault Law, **Allstate** will pay to or on behalf of the **injured person** the following benefits. Payments will be made only when **bodily injury** is caused by an accident arising from the ownership, maintenance or use of the **motor vehicle**.

1. Medical Expenses

Pursuant to the requirements of Section 627.736(1)(a) of the Florida Statutes: eighty percent of reasonable expenses; for medical, surgical, X-ray, dental, and rehabilitative services, including prosthetic devices, and ambulance, hospital and nursing services; which are **medically necessary**; only if the **injured person** receives initial services and care within 14 days after the **motor vehicle** accident. The methodology for determining the amount we will pay for such expenses shall, pursuant to the fee schedule limitations under Section 627.736(5)(a)1. of the Florida Statutes, or any other limitations established by Section 627.736 of the Florida Statutes, or any other provisions of the Florida Motor Vehicle No-Fault Law, as enacted, amended or otherwise continued by law, be limited to eighty percent of the following schedule of maximum charges (or any other fee schedule limitation which may be enacted, amended or otherwise continued by law):

- a. for emergency transport and treatment by providers licensed under chapter 401 of the Florida Statutes, 200 percent of Medicare;
- b. for emergency services and care provided by a hospital licensed under chapter 395 of the Florida Statutes, 75 percent of the hospital's usual and customary charges;

-
- c. for emergency services and care as defined by Section 395.002 of the Florida Statutes, provided in a facility licensed under chapter 395 rendered by a physician or dentist, and related hospital inpatient services rendered by a physician or dentist, the usual and customary charges in the community;
 - d. for hospital inpatient services, other than emergency services and care, 200 percent of the Medicare Part A prospective payment applicable to the specific hospital providing the inpatient services;
 - e. for hospital outpatient services, other than emergency services and care, 200 percent of the Medicare Part A Ambulatory Payment Classification for the specific hospital providing the outpatient services; and
 - f. for all other medical services, supplies and care, 200 percent of the allowable amount under:
 - i) the participating physicians fee schedule of Medicare Part B, except as provided in subparagraphs (ii) and (iii) below.
 - ii) Medicare Part B, in the case of services, supplies and care provided by ambulatory surgical centers and clinical laboratories.
 - iii) the Durable Medical Equipment Prosthetics/Orthotics and Supplies fee

Jazmine Padin and Natalie Rivera were both injured in separate motor vehicle accidents, and Revival provided reasonable, related, and necessary medical treatment to these insureds. (Dkt. #15 at 3-5, Dkt. #26) Revival timely submitted its medical expenses to Allstate for reimbursement under the respective insurance policies' PIP coverage. (Dkt. #15 at 3-5, Dkt. #26)

C. Allstate's Reimbursement of Revival's Charges

Some of Revival's medical expenses were priced at *less than the Schedule* and some were priced at *less than 80% of the Schedule* ("lesser charges"). (Dkt #1-1 at 33-42, Dkt. #26) Instead of reimbursing these lesser charges as required by § 627.736(5)(a)2.-5.,

schedule of Medicare Part B, in the case of durable medical equipment.

If a provider submits a charge for an amount less than the amount determined by the fee schedule or other limitations established by Section 627.736 of the Florida Statutes, or any other provisions of the Florida Motor Vehicle No-Fault Law as described above, we will pay eighty percent of the charge that was submitted.

(Dkt. #26-1 at 67-68; Dkt. #26-2 at 63-64) (**bold** in orig, *italics* and underline added)

Fla. Stat., Allstate unilaterally and improperly chose to reimburse these lesser charges at 80% of the charge submitted. (Dkt. #1-1 at 33-42, Dkt. #26)

D. Revival’s Class Action

Revival brought a class action against Allstate in Florida state court seeking a declaration that Allstate violated the PIP statute by refusing to pay its *lesser* charges in accordance with the PIP statute’s reimbursement requirements. (Dkt. #1-1 at 33-42) Allstate removed this case to the Middle District of Florida (“district court”). (Dkt. #1)

E. Competing Motions for Final Summary Judgment

Both parties moved for entry of final summary judgment before the district court.⁶ (Dkt. #28, Dkt. #29) Revival’s position was that § 627.736(5)(a)2.-5., Fla. Stat. requires insurers like Allstate who elect in their insurance policy to *exclusively* rely on and who do *exclusively* rely on the Schedule to calculate to calculate reimbursement pay *all claims* pursuant to the Schedule (80% of the amount allowed), with *the only exception being* if a charge submitted is less than the

⁶ Both parties filed responses and replies to each other’s motions for final summary judgment. (Dkt. #31, Dkt. #32, Dkt. #33, Dkt. #34)

Schedule, in which case the insurer “*may*” pay the *amount of the charge submitted* instead of paying pursuant to the Schedule. (Dkt. #29) Allstate’s position was that even though its policy *exclusively* elected the Schedule and even though Allstate relied *exclusively* on the Schedule to calculate reimbursement of Revival’s charges, Allstate could ignore the requirements of § 627.736(5)(a)2.-5., Fla. Stat. and pay *all charges* at 80% of the charge submitted. (Dkt. #28)

The district court granted Revival’s motion for final summary judgment, and denied Allstate’s motion for final summary judgment, interpreting § 627.736(5)(a)2.-5., Fla. Stat. as requiring insurers, like Allstate, who *exclusively elect* in their insurance policy and who *exclusively rely* on the Schedule to calculate reimbursements, to pay all charges at 80% of the Schedule *unless* the charge submitted is less than 80% of the Schedule, in which case the insurer “*may pay the amount of the charge submitted*” instead of 80% of the Schedule. (Dkt. #47 at 9) (*citing Irizarry*, 290 So. 3d at 984). Further, the district court interpreted § 627.736(5)(a)2.-5., Fla. Stat. as not allowing insurers like Allstate the option to further reduce reimbursement of a charge that is less than the Schedule to 80% of the charge submitted. (Dkt. #47 at 10) The district court expressly rejected Allstate’s

interpretation of § 627.736(5)(a)2.-5., Fla. Stat. and its additional argument that its policy allows it to reimburse charges that are less than the Schedule or less than 80% of the Schedule at 80% of the submitted charge. (Dkt. #47 at 10-11)

Allstate filed a motion for reconsideration raising new arguments, which, as the district court commented, “blatantly contradicts the *parties’ stipulation*” and that were not previously raised. (Dkt. #69) Revival filed a response to Allstate’s motion for reconsideration. (Dkt. #70) Attached to Revival’s response was a host of Florida trial court cases rejecting Allstate’s interpretation of the PIP statute and confirming the district court’s summary judgment ruling. (Dkt. #70-1) The district court denied Allstate’s motion for reconsideration reasoning that Allstate improperly attempted to change its argument, but nevertheless rejecting Allstate’s revised argument. (Dkt. #77)

F. Final Judgment

The district court entered its Final Judgment “declaring that [Allstate] violated Florida law as set forth in the Court’s [summary judgment ruling].” (Dkt. #94) Allstate timely appealed the Final Judgment. (Dkt. #99)

G. Eleventh Circuit Appeal

Allstate appealed the district court's ruling to the Eleventh Circuit. The Eleventh Circuit certified the following question to this Court:

When a personal injury protection insurance policy provides notice that it will limit payment pursuant to the statutory schedule of maximum charges, may an insurer pay 80% of the charge submitted, even when the charge submitted is less than 80% of the statutory schedule of maximum charges?

Chiropractic LLC v. Allstate Ins. Co., No. 21-10559, 2022 U.S. App. LEXIS 15210, *9 (11th Cir. June 2, 2022).

Revival asserts that the certified question should be rephrased as follows:

When a PIP policy provides notice that it will use the Schedule as the methodology for determining the amount it will pay for medical expenses does § 627.736(5)(a)5., Fla. Stat. require an insurer to pay either the amount of the charge submitted or 80% of the Schedule of when the charge submitted is less than the Schedule? Or, may the insurer pay 80% of the amount of the charge submitted?

STANDARD OF REVIEW

A certified question that presents a pure question of law is reviewed *de novo*. *Christensen v. Bowen*, 140 So. 3d 498, 499 (Fla. 2014).

SUMMARY OF THE ARGUMENT

For PIP insurers like Allstate, who *exclusively elect* and who *exclusively rely* on the Schedule to calculate reimbursements, the plain, clear and unambiguous language of § 627.736(5)(a)2.-5., Fla. Stat. sets forth that insurer's reimbursement obligations. The district court correctly held that § 627.736(5)(a)2.-5., Fla. Stat. requires such an insurer to reimburse all charges at 80% of the Schedule, with the only exception being a charge submitted that is less than 80% of the Schedule, in which case the insurer "*may* pay the amount of the charge submitted" instead of 80% of the Schedule which exception prevents a medical provider from being paid in excess of the amount billed. Based on its statutory interpretation, the district court correctly concluded that Allstate violated § 627.736(5)(a)2.-5., Fla. Stat. by reimbursing Revival's charges that were less than the Schedule and, in some cases less than 80% of the Schedule at 80% of the charge submitted. *Irizarry*, *Muransky*, and *Wick* all confirm the

district court's holding.

The arguments raised by Allstate in the initial brief do nothing to avoid *Irizarry*, *Muransky*, and *Wick*. Moreover, Allstate's arguments have either been expressly rejected by the Fourth and Fifth Districts or cannot be enforced because they directly conflict plain, clear and unambiguous requirements set forth in § 627.736(5)(a)2.-5., Fla. Stat.

Because Allstate cannot demonstrate that the district court's interpretation of § 627.736(5)(a)2.-5., Fla. Stat. is correct, this Court should answer the certified question in the negative.

ARGUMENT

I. ALLSTATE'S AND ITS AMICI'S ARGUMENTS CANNOT CIRCUMVENT THE PLAIN, CLEAR AND UNAMBIGUOUS LANGUAGE OF § 627.736(5)(a)1.-5., FLA. STAT.

Allstate and its *amici* assert, without any support at all, that: (1) the district court's summary judgment ruling contradicts the legislative intent of the PIP statute which should be considered despite the statute also being clear and unambiguous (I.B 19-30, A.B. 19-21); (2) Allstate's policy incorporates the PIP statute but also controls over any contradictory language found in the PIP statute (I.B. 31-34); and (3) the district court's ruling constitutes an

impermissible rewrite of the PIP statute and Allstate's insurance policy (I.B. 34-66). Although Allstate, and now its amici, have recycled its tired arguments while adding new arguments along the way, none of them have any basis in the words that actually appear in the PIP statute, or that appear in Allstate's policy.

At the time the district court entered its summary judgment ruling, *Irizarry* was the controlling law on this issue. Since that time, the Fourth District in *Muransky* and more recently the Fifth District in *Wick* have both clarified and solidified *Irizarry*'s interpretation and application of the PIP statute's reimbursement requirements and have confirmed the district court's identical interpretation and application of the PIP statute in this case. In short, these cases uniformly confirm what the district court already knew to be true – the plain language of the PIP statute is clear and unambiguous and confirms that an insurer like Allstate who elects to rely on and who calculates reimbursement pursuant to the Schedule cannot further reduce the reimbursement charges that are less than the Schedule or less than 80% of the Schedule to 80% of the charge submitted. Because the law is against it, Allstate has had to posit numerous wildly unsupported legal theories, which we are, unfortunately,

required to address.

I. Because § 627.736(5)(a)1.-5., Fla. Stat.'s Plain Language Is Clear And Unambiguous, Resort To Legislative Intent Or Purpose Is Impermissible

First, in contradiction with well-settled law, Allstate argues that the district court's interpretation of the PIP statute, is at odds with its legislative intent or purpose, to-wit, to benefit insureds. (I.B. 19-30) The law in Florida, however, is well established. When a statute is clear and unambiguous, "courts will not look behind the statute's plain language for legislative intent or resort to rules of statutory construction to ascertain intent." *Daniels v. Florida Dep't of Health*, 898 So. 2d 61, 64 (Fla. 2005).

As Allstate admits, the plain language of the PIP statute is clear and unambiguous. (I.B. 5-6) And if there was any doubt, three (3) Florida appellate decisions, *Irizarry*, *Muransky*, and *Wick* have all confirmed that the § 627.736(5)(a)2.-5., Fla. Stat.'s reimbursement requirements are clear and unambiguous. As such, legislative intent is entirely irrelevant and Allstate's request for this Court to consider the legislative intent or purpose of the PIP statute is patently frivolous and legally unsupported. *See Golf Channel v. Jenkins*, 752 So. 2d 561, 564 (Fla. 2000) ("it is a fundamental principle of statutory

construction that where a statute is plain and unambiguous there is no occasion for judicial interpretation”); *Ganzemuller v. Omega Ins. Co.*, 244 So. 3d 1189, 1191 (Fla. 2d DCA 2018); *A.J.M. v. Fla. Dep’t of Law Enf’t*, 15 So. 3d 707, 709 (Fla. 3d DCA 2009).

J. The District Court’s Interpretation Benefits Insureds, Medical Providers, And Insurers, While Allstate’s Interpretation Only Benefits Insurers

Although, as demonstrated above, legislative intent and the purpose behind the PIP statute is irrelevant to this Court’s consideration of the certified question, to be safe, Revival will still address Allstate’s argument.

Allstate argues that the intent behind the PIP statute is to benefit “insureds by providing them with the insurance protection they need, at a lesser cost, and to expand their benefits by reducing their medical care costs.” (I.B. 21-22) The district court’s interpretation of § 627.736(5)(a)5., Fla. Stat. does not contradict this intent, but rather, perfectly aligns with it. On the other hand, Allstate’s unsupported interpretation § 627.736(5)(a)2.-5., Fla. Stat. only benefits insurers by allowing them to pay less PIP benefits than it is statutorily and contractually required to and shifts the difference and resulting financial obligation to its insured. This only benefits

Allstate and instead financially disadvantages the insured.

Applying the PIP statute as written, reading all statutory provisions together and in harmony with one another, and as interpreted and applied by Florida appellate courts, the district court's summary judgment ruling perfectly accomplishes the intent of the PIP statute and benefits more than just the insured, it benefits all involved. More specifically, the district court's application of the plain, clear and unambiguous language of the PIP statute accomplishes the following: (1) when a provider submits a charge that is less than 80% of the Schedule and the insurer pays the charge in the amount of the charge submitted as it is required to do, the insured has no co-payment; the insured's PIP benefits are diminished by an amount that is less than 80% of the Schedule; the medical provider receives full payment for its services upfront; and the insurer pays less than 80% of the Schedule that it elected to calculate reimbursements pursuant to; and (2) when a medical provider submits a charge that is less than the Schedule and the insurer pays that charge at 80% of the Schedule, the insured has a reduced co-pay based on the Schedule's reduced rates; the medical provider is paid in accordance with the Schedule; and the insurer pays the fixed

amount that it is statutorily obligated to pay by its own election.⁷ As noted by the district court in this matter, its interpretation and application of the PIP statute creates a “Win-Win-Win” scenario. (Dkt. #47 at 9)

REVIVAL’S POSITION ACCEPTED BY THE DISTRICT COURT REGARDING CHARGES THAT ARE LESS THAN 80% OF THE SCHEDULE				
Charge Submitted	Schedule Allowed Amount	80% of the Elected Schedule	Insurer’s Responsibility	Insured’s Responsibility
\$75.00*	\$200.00	\$160.00	\$75.00	\$0.00
<p>In this scenario, the submitted charge is less than 80% of the Schedule, and to ensure that an insurer never pays in excess of the amount billed, § 627.736(5)(a)5., Fla. Stat. specifically provides that insurer may instead pay the \$75.00 – “the amount of the charge submitted” – rather than 80% of the Schedule. The medical provider is not paid in excess of the billed amount.</p>				

⁷ Of note, by providing the statutory notice required by § 627.736(5)(a)5., Fla. Stat., as Allstate has, the insured further benefits by not being responsible for billed amounts in excess of the Schedule limits. See § 627.736(5)(a)4., Fla. Stat. Furthermore, the insurer and the insured further benefit through the insurer’s election because “[s]ervices, supplies, or care that is not reimbursable under Medicare or workers’ compensation is not required to be reimbursed by the insurer.” § 627.736(5)(a)1, Fla. Stat. These two significant benefits do not apply to the default fact dependent method set forth in § 627.736(5)(a), Fla. Stat.

**ALLSTATE'S POSITION
REJECTED BY THE DISTRICT COURT
REGARDING CHARGES THAT ARE LESS THAN 80% OF THE
SCHEDULE**

Charge Submitted	Schedule Allowed Amount	80% of the Elected Schedule	Insurer's Responsibility per Allstate	Insured's Responsibility
\$75.00	\$200.00	\$160.00	\$60.00	\$15.00

In this scenario, the insurer is permitted to pay 80% of the charge submitted which is less than the amount it informed its insured that it would pay, leaving the insured responsible for the \$15.00 balance which is more than the insured contracted to be responsible for. Allstate fails to explain how this benefits the insured.

**REVIVAL'S POSITION
ACCEPTED BY THE DISTRICT COURT
REGARDING CHARGES THAT ARE LESS THAN THE
SCHEDULE**

Charge Submitted	Schedule Allowed Amount	80% of the Elected Schedule	Insurer's Responsibility	Insured's Responsibility
\$170.00*	\$200.00	\$160.00	\$160.00	\$10.00

In this scenario, the submitted charge is less than the Schedule, but more than 80% of the Schedule. By Allstate paying 80% of the Schedule amount, the insured receives a reduction in its co-payment, and Allstate still only pays the amount it agreed to pay in its election. The medical provider is not paid in excess of its billed amount.

**ALLSTATE'S POSITION
REJECTED BY THE DISTRICT COURT
REGARDING CHARGES THAT ARE LESS THAN THE
SCHEDULE**

Charge Submitted	Schedule Allowed Amount	80% of the Elected Schedule	Insurer's Responsibility per Allstate	Insured's Responsibility
\$170.00	\$200.00	\$160.00	\$136.00	\$34.00

In this scenario, Allstate seeks to pay less than 80% of the Schedule that it elected to pay and as a result burdens the insured with a much higher co-payment amount (\$34.00 instead of \$10.00). Allstate has not and cannot explain how this benefits the insured.

In all scenarios, under the district court's interpretation, the insurer, insured and medical provider all benefit. The insurer can calculate its reimbursement in accordance with the Schedule as it promises to do under the policy, as opposed to reimbursing an otherwise reasonable charge (which is more than the Schedule in the vast majority of instances), the insured's responsibility is reduced, and the medical provider is paid a greater percentage of his actual charge by the insurer. Under Allstate's methodology only Allstate benefits, *the insured never benefits.*

To be clear, pursuant to § 627.736(5)(a)5., Fla. Stat.'s reimbursement requirements, the legislature has included a fail-safe so that a medical provider *never* receives more than its billed amount, and the insurer never pays more than 80% of the Schedule. § 627.736(5)(a)5., Fla. Stat. Meaning if a submitted charge is less than 80% of the Schedule, the insurer is not required to pay that charge at the higher reimbursement rate of 80% of the Schedule. § 627.736(5)(a)5., Fla. Stat. The legislature clearly foresaw the possible inequity if a medical provider submitted charges that were less than 80% of the Schedule. To remedy that inequity, the legislature included § 627.736(5)(a)5., Fla. Stat., which states that in the case of a charge submitted that is less than 80% of the Schedule (i.e., for this provider, 80% of 200% of Medicare), the insurer may pay the amount of the charge submitted. This presents the insurer with the only opportunity to pay less than 80% of the Schedule it *exclusively elected* pursuant to § 627.736(5)(a)5., Fla. Stat. and *exclusively relied on* to calculate reimbursements.

The charts above explain perfectly the motivation for Allstate's interpretation; if this Court accepts Allstate's interpretation of § 627.736(5)(a)2.-5., Fla. Stat.'s reimbursement requirements (which it

cannot), Allstate would pay less than it contracted to pay and less than what the PIP statute requires it to pay (80% of the Schedule, unless the charge is less than 80% of the Schedule); and the provider would receive only 80% of its already reduced charge which ultimately would discourage medical providers from charging less than the Schedule; and the insured would be responsible for a 20% balance payment which is more than they agreed to be responsible for (20% of the Schedule unless the charge is less than 80% of the Schedule). Additionally, Allstate's interpretation of the PIP statute would effectively negate its notice to use the Schedule as its exclusive methodology for calculating reimbursements and render the notice requirement set forth in § 627.736(5)(a)5., Fla. Stat. meaningless. See *Searcy, Denney, Scarola, Barnhart & Shipley v. State*, 209 So. 3d 1181, 1189 (Fla. 2017) ("All parts of the statute must be given effect, and the Court should avoid a reading of the statute that renders any part meaningless."). See also, *Borden v. East-European Ins. Co.*, 921 So. 2d 587, 595 (Fla. 2006) ("all parts of a statute must be read together in order to achieve a consistent whole.") (internal citations omitted).

Allstate argues that insureds in this scenario do not have a reduced co-pay, but rather no co-pay. (I.B. 41-43) As no co-pay is a reduced co-pay, this is a difference without a meaningful distinction. The argument that the PIP statute requires a co-pay at all was addressed and rejected by the Fourth District in *Muransky* in which the Court held that the insurer's

argument that the statute requires coinsurance to apply to all billed amounts is *clearly erroneous* as the statute merely provides that an insurer may opt to limit reimbursement to the typical 80% reimbursement rate. See § 627.736(5)(a)5., Fla. Stat. *Kingsway Amigo Ins. Co. v. Ocean Health, Inc.*, 63 So. 3d 63, 68 (Fla. 4th DCA 2011) (“An insurance company is not precluded from offering greater coverage than that required by statute.”).

Muransky, 323 So. 3d at 747 (emph. added). Despite Allstate's assertion to the contrary, there is no support for its conclusion that the PIP includes a mandatory co-pay requirement.⁸

⁸ The district court correctly rejected Allstate's reliance below on *State Farm Mut. Auto. Ins. Co. v. MRI Assoc. of Tampa, Inc.*, 252 So. 3d 773, 778 (Fla. 2d DCA 2018) (“*MRI Assocs. I*”), concluding *MRI Assoc. I* considered the issue of whether an insurer could use both the default and the permissive Schedule method of calculating reimbursement of medical expenses. In this case the parties stipulated that Allstate's policy stated that the methodology for determining the amount Allstate will pay for such expenses shall be limited to 80% of the Schedule. “Thus, the Florida Supreme Court's upcoming decision in [*MRI Assocs. I*] as to whether the PIP statute allows insurers to combine the fact- dependent inquiry methodology and the schedule of

Allstate is the one asking this Court to rewrite the statute to meet its financial motivations. Specifically, § 627.736(1)(a), Fla. Stat., known as the reasonableness mandate, states that an insurance policy must provide *minimal personal injury protection benefits* to the named insured in the amount of “[e]ighty percent of all reasonable expenses.” § 627.736(1)(a), Fla. Stat. There is nothing in this language that mandates a co-payment of 20% in all instances. This is *minimum* coverage.

There are two payment methodologies in Florida’s PIP statute that satisfy § 627.736(1)(a), Fla. Stat.’s reasonableness mandate: (1) the default method which is a “fact-specific analysis of whether a health care provider’s charges are reasonable” as set forth in § 627.736(5)(a), Fla. Stat.; *Wick*, 327 So. 2d at 443; or (2) the permissive method, elected by an insurer by providing the statutorily required notice in its policy as mandated by § 627.736(5)(a)5., Fla. Stat., which provides insurers a preset, fixed Schedule by which it may pay the charges submitted. *See* § 627.736(5)(a)1. and (5)(a)5.,

maximum charges methodology has no bearing on this case.” § 627.736(5)(a)5., Fla. Stat. (Dkt. #77 at 6-8)

Fla. Stats. Reimbursement pursuant to the Schedule satisfies § 627.736(1)(a), Fla. Stat.'s reasonableness mandate regardless of whether the charge is: (a) more than the Schedule, and reimbursement is limited to 80% of the Schedule; (b) less than the Schedule, and the insurer pays 80% of the Schedule with the insured paying a reduced co-pay; or (c) less than 80% of the Schedule, and the insurer pays the amount of the charge submitted and the insured does not have to pay anything additional. Section 627.736(5)(a)5., Fla. Stat. guarantees that when reimbursement is calculated pursuant to the Schedule, no provider is ever paid more than the amount billed. As stated by this Court in *MRI Assocs.* these methodologies are not mutually exclusive and an insurer is not required to elect one or the other as its method for determining the amount it will pay. However, it is undisputed that Allstate did, in fact, elect to use the Schedule as the exclusive methodology for determining the amount it would pay.

Allstate further claims that an insured suffers "a net loss" when its insurer reimburses a charge that is less than 80% of the Schedule in full as the additional 20% comes from its remaining insurance benefits. (I.B. 42) This argument is specious at best as Allstate, being

permitted to pay these charges in the amount submitted rather than the statutorily required amount of 80% of the Schedule, is already availing itself of paying reduced benefits. This argument directly conflicts with *Irizarry*, *Wick*, and *Muransky*. It is only if Allstate makes the foolish decision to pay 80% of the Schedule when a charge is less than 80% of the Schedule that the insured would suffer a “net loss.” This scenario is exactly what the Legislature sought to prevent by allowing an insurer the option of paying this already reduced charge at the amount submitted rather than 80% of the Schedule which otherwise is “the required amount an insurer must pay.” *Irizarry*, 290 So. 3d at 981.

Allstate further argues that the district court’s interpretation effectively eliminates the PIP statute’s “80% payment provision.” (I.B. at 45) This is merely a recycled and, as explained above, unsubstantiated argument. The district court’s ruling does not eliminate § 627.736(1)(a), Fla. Stat.’s reasonableness mandate, but instead properly applies it as written.

Section 627.736(1)(a), Fla. Stat.’s directive that an insurer pay “[e]ighty percent of all reasonable expenses” is one of several times in the PIP statute the Legislature specified when a reduction in payment

should be applied and in what amounts. Other delineations include:

- “The insurer may limit reimbursement to **80 percent** of the following schedule of maximum charges...” § 627.736(5)(a)1, Fla. Stat.
- “...the insurer may limit reimbursement to **80 percent** of the maximum reimbursable allowance under workers’ compensation ...” § 627.736(5)(a)1, Fla. Stat.:
- “**Sixty percent** of any loss of gross income and loss of earning capacity ...” § 627.736(1)(b), Fla. Stat.
- “... the insurer shall pay to the person **20 percent** of the amount of the reduction, up to \$500... the insurer shall pay to the person **40 percent** of the amount of the reduction, up to \$500.” § 627.736(5)(f), Fla. Stat.

The Legislature, however, deliberately left out any such limiting language (*i.e.* 80 percent) from § 627.736(5)(a)5., Fla. Stat., instead, stating, “the insurer *may pay* the amount of the charge submitted.” (emph. added) As such, this Court cannot rewrite the statute to include the words “eighty percent” when the Legislature chose to leave them out. *Knowles v. Beverly Enters.-Florida, Inc.*, 898 So. 2d 1, 7 (Fla. 2004) (“The law is well settled that courts in this state are “without power to construe an unambiguous statute in a way which would extend, modify, or limit, its express terms or its reasonable and obvious implications.”) (internal citations omitted).

Moreover, there cannot be an overarching 80% reimbursement limitation that spans the entirety of § 627.736, Fla. Stat., for if there was, then under the Schedule, an insurer would only be obligated to pay 80% of 80% of the Schedule, or 80% of 80% of the Florida's workers compensation schedule, or 80% of 60% of the insured's wage loss claims. See §§ 627.736(5)(a)1. and 627.736(1)(b), Fla. Stat. Such argument is nonsensical and clearly not what the PIP statute articulates or intends.

Allstate's election to calculate reimbursement exclusively pursuant to the Schedule and decision to limit reimbursement exclusively pursuant to the Schedule (rather than conduct a fact specific investigation), satisfies § 627.736(1)(a), Fla. Stat.'s reasonableness mandate. Accordingly, there is no merit to Allstate's argument concerning an alleged 80% mandate.

Allstate is unable to point to a single fact or piece of evidence that would show that its strained and self-serving interpretation of the PIP statute benefits the insured in any way. As confirmed by the Fourth and Fifth District Courts of Appeal, the PIP statute is clear, unambiguous, and designed to create a "win-win-win" scenario for all involved. (Dkt. #47 at 9) As such, the district court's summary

judgment ruling perfectly aligns with the intent of the PIP statute and should be affirmed.

K. The District Court's Interpretation Aligns With The Legislative Purpose Behind Recent Amendments To The PIP Statute, Which Is To Reduce The Cost Of Medical Expenses

Allstate further argues that the district court's interpretation of the PIP statute runs afoul of the purpose of the 2008 and 2012 amendments to the PIP statute which was to reduce the cost of medical expenses. (I.B. 55-56) This argument is nonsensical and intellectually dishonest.

In 2008, the Legislature amended the PIP statute to include § 627.736(5)(a)2.-5., Fla. Stat. (2008), allowing insurers to limit reimbursements to 80% of a permissive schedule of maximum charges. As Allstate noted, the purpose of this amendment was to curb the rising costs of litigation as to the "reasonableness" of medical provider's charges. (IB. 27) In 2012, the Legislature, further amended the PIP statute to include § 627.736(5)(a)5., Fla. Stat. (2012), requiring insurers to provide notice in the policy of the insurer's election to use the Schedule. This notice "gives insurers the option to avoid factually analyzing whether charges are reasonable by

permitting them to pay health care providers pursuant to certain ratios of applicable fee schedules, such as those adopted for Medicare or Workers Compensation.” *Wick*, 327 So. 2d at 443. *See also, Irizarry and Muransky* (same). In addition to eliminating litigation over the reasonableness of the charge, by allowing insurers to limit and reimburse medical benefits pursuant to a fixed schedule the Legislature gave the insurance industry a huge windfall since the overwhelming majority of medical bills exceed the Schedule’s prefixed amounts.⁹

This subsequent amendment also recognized the fact that some submitted charges were less than 80% of the Schedule and expressly gives insurers the option of paying the amount of the charge submitted, as opposed to 80% of the Schedule in those limited circumstances, which prevent a medical provider from being paid more than it billed. If an insurer *exclusively elects* the Schedule,

⁹ It cannot be disputed that submitted charges that are less than the Schedule, and certainly submitted charges that are less than 80% of the Schedule do not represent the majority of charges submitted under PIP coverage. In fact, they are a small minority of charges submitted. These lesser charges are typically submitted by small providers who are already billing far below market rates and further cutting their reimbursements would undoubtedly present a financial hardship not anticipated.

which Allstate has done, if an insurer *exclusively relies* on the Schedule to calculate reimbursements, as Allstate has, and if a medical provider submits a charge that is less than 80% of the Schedule § 627.736(5)(a)5., Fla. Stat. states that “the insurer *may* pay the amount of the charge submitted” which is an alternative to paying 80% of the Schedule. There is no other way to read this clear and unambiguous statute that would give all words, on their face, full meaning and effect.

Despite its objections, Allstate fails to address what the purpose of § 627.736(5)(a)5, Fla. Stat. is if not to allow insurers the option to avoid payment of the higher amount of 80% of the Schedule for submitted charges that are less than 80% of the Schedule. See *Searcy, Denney, Scarola, Barnhart & Shipley*, 209 So. 3d at 1189; *Borden*, 921 So. 2d at 595. Furthermore, Allstate’s supposition that reimbursement at 100% of these charges will exhaust benefits sooner cannot be true as an insurer paying 100% of these charges is still paying less than 80% of Schedule with the added advantage that the insured has no required balance payment. The district court’s interpretation in no way disturbs the goal of reducing the cost of medical care; in fact, it enhances that purpose.

L. A PIP Policy Provision That Purports To Allow An Insurer To Pay Less Than 80% Of The Schedule Conflicts With § 627.736(5)(a)2.-5., Fla. Stat.'s Reimbursement Requirements

Allstate next argues that, notwithstanding the plain, clear and unambiguous language of the PIP statute, its own insurance policy allows it to reimburse all charges, including charges that are less than the Schedule and even those charges that are less than 80% of the Schedule, at 80% of the charge submitted rather than at 80% of the Schedule or 100% of the charge submitted respectively. (I.B. 31-34) However, as the district court noted, this case is not about whether Allstate pays its claims in accordance with its policy, but, rather, whether Allstate violated Florida law by its failure and refusal to pay claims in accordance with § 627.736(5)(a)1. and (5)(a)5., Fla. Stats. This Court's analysis should therefore begin and end with the PIP statute's reimbursement requirements, and the Fourth and Fifth District Courts of Appeals' uniform interpretation and application of these statutory provisions, all of which render the language of Allstate's policy irrelevant, immaterial to this action, and if anything, directly contrary to the plain, clear and unambiguous language of the PIP statute.

Even if this Court were to consider Allstate's policy language, the *Muransky* court addressed and rejected the identical argument made by Geico in that case that its insurance policy allowed it to pay all charges that are less than the Schedule at 80% of the charge submitted. *Muransky*, 323 So. 3d at 747. The *Muransky* court concluded that such a policy provision would "conflict with section 627.736(5)(a)5.'s purpose." *Id.* Just as in *Muransky*, Allstate's policy unlawfully creates a payment methodology (80% of charges that are less than the Schedule) not provided for in and that directly conflicts with § 627.736(5)(a)1. and 5., Fla. Stats.

The law in Florida in this regard is well settled. "Where a contract of insurance is entered into on a matter surrounded by statutory limitations and requirements, the parties are presumed to have entered into [the contract] with reference to the statute, and the statutory provisions become part of the contract." *Geico Gen. Ins. Co. v. Schwinn*, 2006 WL 1529092 (M.D. FL 2006) (citing *Standard Marine Ins. Co. v. Allyn*, 333 So. 2d 497 (Fla. 1st DCA 1976)). See also, § 627.7407(2), Fla. Stat. ("[a]ny personal injury protection policy in effect on or after January 1, 2008, shall be deemed to incorporate the provisions of the Florida Motor Vehicle PIP Law, as revived and

amended by this action”). Pursuant to § 627.7311, Fla. Stat., the statutory provisions and procedures authorized by the PIP statute “shall be implemented by insurers offering policies pursuant to the Florida Motor Vehicle PIP Law. The Legislature intends that these provisions and procedures have *full force and effect regardless of their inclusion in an insurance policy form*, and a specific provision or procedure authorized in ss. 627.730-627.7405 *shall control over general provisions in an insurance policy form.*” § 627.7311, Fla. Stat. (emph. added).

As such, Allstate’s policy incorporates by reference and by specific citation to, § 627.736(5)(a)2.-5., Fla. Stat.’s reimbursement requirements. This incorporation, coupled with Allstate’s contractually created and conflicting methodology of further reducing reimbursement of charges submitted that are less than the Schedule to 80% of the charge submitted, creates a direct conflict between Allstate’s policy and the express, clear and unambiguous provisions and purpose of the PIP statute. *See Fla. Farm Bureau Cas. Ins. Co. v. Cox*, 943 So. 2d 823, 832-33 (Fla. 1st DCA 2006) (explaining that “insurance policies are deemed to incorporate applicable statutes, and *conflicting policy provisions must give way*”). (emph. added).

Revival is not disputing that Allstate’s policy says it will reimburse charges at 80%; rather, Revival’s position is that Allstate’s policy directly conflicts with the plain, clear and unambiguous requirements of the PIP statute. This is clear when the statutory and policy provisions are reviewed in concert:

What § 627.736(5)(a)5., Fla. Stat. states:	What Allstate’s policy states:
If a provider submits a charge for an amount less than the amount allowed under subparagraph 1. [the Schedule], the insurer may pay the amount of the charge submitted. (bold added)	If a provider submits a charge for an amount less than the amount determined by the fee schedule or other limitations,... [Allstate] will pay eighty percent of the charge that was submitted. (Dkt. #26 at ¶ 7) (bold added)

Allstate’s policy and the PIP statute *do not track* regarding the reimbursement of charges submitted that are less than the Schedule and that are less than 80% of the Schedule. Allstate has carefully added the words “eighty percent of” to its policy and unilaterally attempts to afford itself the right to pay even less than the coverage minimums set forth in the PIP statute. Allstate is the one asking this Court to re-write the PIP statute so that it might conform with its own patently unlawful policy language; this, the Court should not and cannot do.

At a minimum, incorporating § 627.736(5)(a)2.-5., Fla. Stat.'s reimbursement requirements and then adding additional reimbursement limitations beyond the minimums set forth in § 627.736(5)(a)2.-5., Fla. Stat. creates an ambiguity that neither the district court nor this Court can enforce.

An ambiguity exists when the terms of an insurance policy are subject to different reasonable interpretations. *Weldon v. All Am. Life Ins. Co.*, 605 So. 2d 911, 915 (Fla. 2d DCA 1992). When such ambiguities exist in an insurance policy, they are interpreted liberally in favor of the insured and strictly against the insurance company that drafted the policy. *Washington Nat. Ins. Corp. v. Ruderman*, 117 So. 3d 943, 951 (Fla. 2013); *Prudential Prop. and Cas. Co. v. Swindell*, 622 So. 2d 467, 470 (Fla. 1993). As this ambiguity is the result of a further reduced reimbursement to the medical provider in an amount less than what § 627.736(5)(a)1. and (5)(a)5., Fla. Stats. provide, and saddles the insured with a balance payment not required by the PIP statute, Allstate's policy is clearly not in favor of the insured and must be rejected.

On its face, Allstate's policy is contrary to the plain, clear and unambiguous language of the PIP statute and provides less coverage than that the minimums required by Florida law in violation of public policy. See *Scarborough v. Travelers Inc. Co.*, 718 F. 2d 702, 709 (5th Cir. 1983) ("the determination of whether an insurance policy is contrary to public policy is governed by the applicable state law"). Under Florida law, "[t]o contract for an amount of coverage which is less than the minimum required by law is repugnant to legislative policy." *Standard Accident Ins. Co. v. Gavin*, 184 So. 2d 229, 232 (Fla. 1st DCA 1966). See also, *Dauksis v. State Farm Mut. Auto. Ins. Co.*, 623 So. 2d 455 (Fla. 1993) (insurance companies may not provide less coverage than required by statute); *Young v. Progressive Southeastern Ins. Co.*, 753 So. 2d 80, 83 (Fla. 2000) (provisions in insurance policies that provide less coverage than provided by statute are void as against public policy). As such, whether Allstate complied with the terms of its policy is irrelevant as its policy, which incorporates the PIP statute, is ambiguous, conflicting, and creates a payment methodology not afforded by the PIP statute that results in Allstate providing less coverage than that required by statute and prohibited by Florida Law. As such, Allstate's policy is void and

contrary to public policy as it relates to the charges submitted that are less than the Schedule. Accordingly, the district court correctly granted summary judgment in Revival's favor.

M.The District Court's Interpretation Has Been Confirmed By Florida's Fourth And Fifth District Courts Of Appeal

Allstate next argues that the district court "rewrote" the PIP statute to include "mandatory" reimbursement options. (I.B. 34-62) This is merely Allstate's way of saying the same thing a different way hoping for a different result. As demonstrated above, the district court's summary judgment ruling has been confirmed by Fourth and Fifth District Courts of Appeal. The district court's summary judgment ruling adopts the PIP statute's plain, clear and unambiguous language that an insurer like Allstate who elects and utilizes the Schedule must pay all charges submitted at 80% of the Schedule with the only exception being when a charge submitted is less than 80% of the Schedule in which case the insurer may pay the amount of the charge submitted. Nothing more and nothing less. The only one who has attempted to rewrite the PIP statute is Allstate.

**N. This Court's Holding In *MRI Assocs. II* Does Not Compel
A Different Result**

Last, Allstate argues that the district court's summary judgment ruling conflicts with this Court's recent decision in *MRI Assocs. II*. Allstate's claim that *MRI Assocs. II* addressed and rejected Revival's position that its *lesser* charges should have been reimbursed at 80% of the Schedule or 100% of the charges submitted misrepresents the most salient facts and arguments of this case and those present in *MRI Assocs. II*.

Put simply, Revival's position is:

The PIP statute requires an insurer who provides notice that it will use the Schedule as the exclusive methodology to determine the amount it will pay and who actually limits reimbursement pursuant to the Schedule to reimburse all charges at 80% of the Schedule, with the only exception being when a charge submitted is less than 80% of the Schedule in which case the insurer may pay the amount of the charge submitted instead of 80% of the Schedule.

As is apparent from the plain language of its opinion, *MRI Assocs. II* applicability to this issue is extremely limited if at all.

In *MRI Assocs. II*, this Court considered a dispute between several medical providers and State Farm over the proper method of reimbursement of the providers' MRI bills (all of which exceeded the applicable amount set forth in the Schedule), specifically "whether

State Farm’s policy ‘lawfully invokes the schedule of maximum charges...set forth in section 627.736(5)(a)(1).’” *MRI Assocs. II*, 334 So. 3d 577 at 581. The medical providers maintained “that State Farm must elect *either* the reasonable charge method of calculation under section 627.736(5)(a) *or* the schedule of maximum charges method of calculation under section 627.736(5)(a)(1)” but not both as it would be “an ‘unlawful hybrid method’ of reimbursement calculation.” *Id.*, 334 So. 3d 577 at 581. (emph. added). Thus, the entire issue in *MRI Assocs. II* concerned the election of a reimbursement method. It did not address what is required of an insurer once it elect and choses to rely on the Schedule to calculate reimbursements.

This Court in *MRI Assocs. II* reviewed the Second District’s reversal of the trial court’s grant of the medical providers’ motions for summary judgment and conclusion that “there are no longer two mutually exclusive methodologies for calculating the reimbursement payment owed by the insurer” and “State Farm’s inclusion of the statutory factors in its definition of reasonable charges¹⁰ tracks the

¹⁰ Allstate’s PIP policy does not include the statutory factors in its definition of reasonable charges.

PIP statute and is not consistent with the policy language limiting reimbursement to the schedule of maximum charges.” *Id.* at 582. The Second District then certified the following question to the Florida Supreme Court:

DOES THE 2013 PIP STATUTE AS AMENDED PERMIT AN INSURER TO CONDUCT A FACT-DEPENDENT CALCULATION OF REASONABLE CHARGES UNDER SECTION 627.736(5)(a) WHILE ALLOWING THE INSURER TO LIMIT ITS PAYMENT IN ACCORDANCE WITH THE SCHEDULE OF MAXIMUM CHARGES UNDER SECTION 627.736(5)(a)(1)?

Id.

In addressing this certified question, this Court reasoned:

The permissive nature of the statutory notice language... signals that the insurer is given an option that may be used in addition to other options that are authorized...a reasonable reading of the statutory text requires that reimbursement *limitations* based on the schedule of maximum charges be understood...simply as an optional method of capping reimbursements rather than an exclusive method for determining reimbursement rates. By its very nature, a limitation based on a schedule of maximum charges establishes a ceiling but not a floor.

Id. at 584-585. This Court subsequently rephrased the certified question as follows:

DOES SECTION 627.736(5)(a), FLORIDA STATUTES (2013), PRECLUDE AN INSURER THAT ELECTS TO LIMIT PIP REIMBURSEMENTS BASED ON THE SCHEDULE OF MAXIMUM CHARGES FROM ALSO USING THE SEPARATE STATUTORY FACTORS FOR DETERMINING THE REASONABLENESS OF CHARGES?

Id. at 585. This Court answered that rephrased question in the negative. *Id.* at 585. The distinctions between this case and *MRI Assocs. II* are glaring and deserve attention.

First, the distinction between the language in State Farm’s insurance policy in *MRI Assocs.* and the language in Allstate’s insurance policy in this case cannot be overstated. State Farm’s insurance policy provided that State Farm would determine whether a charge was reasonable or not by considering “*one or more*” of several factors. *MRI Assocs. II*, 334 So. 3d at 581. Those factors included all of the fact dependent factors found in § 627.736(5)(a), Fla. Stat. as well as “the schedule of maximum charges” found in § 627.736(5)(a)1., Fla. Stat. *Id.* The medical providers argued that State Farm’s policy language was an impermissible “hybrid” reimbursement method and that because State Farm had not sufficiently elected the Schedule, it breached the insurance policy when it reimbursed pursuant to the Schedule. This Court disagreed

and concluded that when an insurance policy like State Farm's states that the insurer "may" consider one or more of multiple factors in determining whether a charge is reasonable, which in that case included the § 627.736(5)(a), Fla. Stat. factors *as well as* the § 627.736(5)(a)1., Fla. Stat. schedule of maximum charges *along with* the freedom to rely on whichever of those factors it chose to, is "simply as an optional method of capping reimbursements rather than an exclusive method for determining reimbursement rates."

State Farm's broad and expansive policy language is not present in this case. In this case, Allstate has stipulated that its insurance policy states that the Schedule is the *exclusive* method of calculating reimbursements. Allstate's insurance policy does not provide it with the option to calculate reimbursement pursuant to § 627.736(5)(a), Fla. Stat. *as well as* § 627.736(5)(a)1., Fla. Stat. *MRI Assocs.* does not address such restrictive policy language. If Allstate wants this Court to consider its policy language, then the only conclusion is that Allstate is required to reimburse Revival's charges pursuant to the Schedule and as well as § 627.736(5)(a)2.-5., Fla. Stat.'s reimbursement requirements.

Moreover, *MRI Assocs. II* did not concern submitted charges that were less than the Schedule. Instead, the charges submitted in *MRI Assocs.* were all *more than* the Schedule. As such, this Court did not have the occasion to address § 627.736(5)(a)2.-5., Fla. Stat.’s reimbursement requirements.

At its core, this case is not about whether Allstate can use the Schedule to determine the amount it will pay. The parties have stipulated to this fact. *MRI Assocs. II*, however, did *not* address and does *not* interpret § 627.736(5)(a)2.-5., Fla. Stat.’s reimbursement requirements, particularly in terms of the reimbursement of charges submitted that are below the Schedule. This Court specifically said that “Provisions governing the application of the schedule of maximum charges are detailed in subsection (5)(a)2.-5” and provided no further discussion regarding the actual statutory reimbursement requirements.

Nevertheless, Allstate points to *MRI Assocs. II*’s observations that the Schedule should be seen as “an optional method for determining reimbursements rather than an exclusive method of determining reimbursement rates” and “a limitation based on a schedule of maximum charges establishes a ceiling but not a floor”

to mean that an insurer who elects to pay the Schedule is not required to pay a charge billed below the Schedule at 80% of the Schedule. However, this Court’s rationale is consistent with the long-held understanding that the Schedule is a “safe harbor” for insurers’ reimbursement requirements. *See Geico Indem. Co. v. Virtual Imaging Servs.*, 79 So. 3d 55, 67 (Fla. 3d DCA 2011) (“as is clear from the PIP statute’s mandatory reimbursement requirements, the PIP fee schedule outlines a safe harbor method for satisfying both the policy and statutory reimbursement requirements”); *Kingsway Amigo Ins. Co. v. Ocean Health, Inc.*, 63 So. 3d 63 (Fla. 4th DCA 2011). It is axiomatic that, if an insurer pays the greatest reimbursement required of it (that is “capping reimbursements” or “establishing a ceiling”), it is immunized from suit. Allstate therefore mischaracterizes this Court’s characterization of the Schedule as a “ceiling.” Under the Schedule, the payment of a charge more than the Schedule may be limited to, or “capped” at, 80% of the Schedule—a “ceiling.” However, it is also necessarily true that to preserve the safe harbor afforded by the Schedule, the payment of a charge more than the Schedule may not be reduced below 80% of the Schedule—a “floor.” The reason for this apparent contradiction is that

reimbursement under the Schedule is not a range, like circles on a target, but a singular data point, the bullseye. In other words, when understood as a safe harbor, an insurer does not limit reimbursement to the Schedule, but rather *pays pursuant to the Schedule*.

As *MRI Assocs. II* addressed only an insurer's election of reimbursing PIP claims rather than the proper application of the Schedule once it actually chose that method, its ruling does not affect the instant action. As such, Allstate cannot rely on it to abdicate its reimbursement responsibilities.

It is worth noting that in its own *MRI Assocs. I* opinion, the Second District clearly found that while the medical providers preserved their challenge to State Farm's election of both reimbursement methodologies, they failed to preserve their separate challenge to State Farm's application of the Schedule:

However, by stipulation of the parties, the trial court's summary judgment order was limited to the issue of whether State Farm's policy "lawfully invokes the schedule of maximum charges...set forth in section 627.736(5)(a)(1)"; therefore, *whether the amount actually paid by State Farm complies with the schedule of maximum charges was not before the trial court and is thus outside the scope of our appellate review.*

MRI Assocs. I, 252 So. 3d at 775 (emph. added). This is further proof that *MRI Assocs. II* only addressed an insurer's right to elect both available methods of reimbursing PIP claims. The plain language of the certified question rephrased by this Court in *MRI Assocs. II* makes clear that this Court only considered whether State Farm's election of one payment methodology prevents consideration of the other. This is confirmed by *MRI Assocs. II*'s conclusion that "[n]o basis has been presented for invalidating State Farm's *election* of the limitations of the schedule of maximum charges." *MRI Assocs. II*, 334 So. 3d at 585. (emph. added).

A complete, true and intellectually honest review of this Court's decision in *MRI Assocs. II* reveals that this Court has not passed on similar policy language or what a PIP insurer's reimbursement requirements are when it elects and chooses to exclusively use the Schedule as its methodology for determining the amount it will pay, as Allstate has done.

O. *Progressive Am. Ins. Co. v. Back on Track, LLC*. Was Wrongfully Decided And Should Be Disapproved

Last, Allstate relies on the Second District's opinion in *Progressive Am. Ins. Co. v. Back on Track, LLC* to support its argument that payment of 80% of a submitted charge, even if that charge is less than the Schedule, satisfies § 627.736(1)(a), Fla. Stat.'s 80% payment mandate. (I.B. 57-60) *Back on Track*, however, was wrongly decided and this Court should disapprove that opinion when it affirms the district court's interpretation in this case.

Section 627.736(1)(a), Fla. Stat. is what has come to be known as the "reasonable expense mandate." *Allstate Ins. Co. v. Orthopedic Specialists*, 212 So. 3d 973, 976 (Fla. 2017) (citing *Virtual Imaging*, 141 So. 3d at 155). As this Court explained in *Virtual Imaging*, "there are two different methodologies for calculating reimbursements to satisfy the PIP statute's reasonable medical expenses coverage mandate." First, the PIP statute provides that reasonable expenses can be calculated by using the § 627.736(5)(a), Fla. Stat. fact dependent methodology. Second, the PIP statute states that the § 627.736(5)(a)1., Fla. Stat. schedule of maximum charges can be used by an insurer to calculate reimbursement so long as proper notice is

given in the insurance policy. While these two methods are not mutually exclusive, there is nothing in the PIP statute that prohibits an insurer from electing the Schedule as its *exclusive method* of calculating reimbursement as Allstate has done in this case. As this Court stated in *Virtual Imaging*, “[p]ayment in accordance with the schedule satisfies the statutory mandate to pay reasonable expenses.” *Virtual Imaging*, 141 So. 3d at 147.

Allstate has undeniably made an election to exclusively rely on the Schedule to calculate reimbursement, and by doing so, has established how it will determine what amount is reasonable. It is vital to remember that if an insurer who has elected to rely on the Schedule as its exclusive payment method were permitted to pay 80% of a lesser charge (simply because the lesser charge is reasonable) there would have been absolutely no reason for the Legislature to include the insurer with the option in § 627.736(5)(a)5., Fla. Stat. “pay the amount of the charge submitted.” Such an interpretation is impermissible. *Johnson v. Feder*, 485 So. 2d 409, 411 (Fla. 1986) (“statutory interpretations that render statutory provisions superfluous ‘are, and should be, disfavored.’”).

Because of its exclusive reimbursement election Allstate is governed by § 627.736(5)(a)2.-5.'s reimbursement requirements.¹¹ Because Allstate has exclusively elected to pay pursuant to the Schedule, if a charge submitted is less than the Schedule it must pay 80% of the Schedule with the only exception being when a charge submitted is less than 80% of the Schedule, in which case Allstate “may pay the amount of the charge submitted” or 80% of the Schedule.

The district court’s interpretation of the PIP statute in concert with the plain language of Allstate’s insurance policy does not conflict with § 627.736(5)(a)1., Fla. Stat. Because Allstate chose the Schedule it must also abide by the Schedule. Section 627.736(5)(a)2.-5., Fla. Stat.’s reimbursement requirements must be construed in a way that renders each provision meaningful. Because the Second District’s

¹¹ Of note, there is no record evidence that Allstate used anything *other* than the Schedule to determine the reasonableness of the lesser charges at issue in this case. Allstate *did not* conduct a fact dependent examination of the submitted charges under § 627.736(5)(a)1.a.-f., Fla. Stat., but instead noted that the charges submitted were less than the Schedule and paid 80% of the submitted charges.

interpretation of § 627.736(5)(a)2.-5., Fla. Stat. utterly meaningless, that opinion should be disapproved.

P. The Arguments Raised by *Amici*, Personal Insurance Federation of Florida (“PIFF”) Do Not Change The Analysis Or The Result

Although PIFF’s *amicus* brief, under the guise of assisting the Court, is largely a regurgitation of Allstate’s Initial Brief, there are two arguments raised by PIFF that need to be responded to.

PIFF claims that the opinions of the Fourth and Fifth District Courts of Appeal are distinguishable because of the policy language in those cases. (A.B. 15-18) This argument is intellectually dishonest and severely misrepresents the holdings in those cases in an obvious attempt to confuse the issues.

There is nothing in either *Irizarry*, *Muransky*, or *Wick* that indicates that those decisions turn on the language of those policies. Instead, each of those cases were based entirely on those Court’s interpretations of § 627.736(5)(a)2.-5., Fla. Stat. In this case, as in *Muransky*, and *Wick*, Allstate’s policy provides notice that it will rely on the Schedule to calculate reimbursements, Allstate did rely on the Schedule to calculate reimbursements, and § 627.736(5)(a)1.-5., Fla. Stat. requires Allstate to reimburse all submitted charges at 80% of

the Schedule, unless the submitted charge is less than 80% of the Schedule, in which case Allstate *may* pay the charge in the amount submitted as opposed to 80% of the Schedule. It impossible to read *Irizarry*, *Muransky*, or *Wick* as PIFF would have this Court do.

PIFF further claims that the district court's interpretation would render medpay coverage meaningless. (A.B. 21-22) This argument is entirely unsupported.

Fundamentally, as the *amicus* brief notes, medpay coverage is *optional* coverage offered by insurers and that is *not required* and *not regulated by any Florida statute*. PIFF fails to explain how an optional insurance coverage can change how this Court interprets § 627.736(5)(a)1.-5., Fla. Stat. Because medpay coverage is optional, even if the district court's interpretation did render medpay coverage meaningless it would not matter. The provisions of the PIP statute control. And pragmatically, the district court's interpretation of § 627.736(5)(a)2.-5., Fla. Stat. does nothing to render medpay meaningless because even if the insurer has to pay 100% of a submitted charge, medpay coverage is still available to cover an insured's co-pay for other charges if applicable based on the language

of the PIP statute, is still available to cover an insured's deductible, and is still available once PIP has exhausted.

There is simply nothing in the *amicus* brief that changes the analysis or outcome in this case.

CONCLUSION

The law in Florida regarding reimbursement pursuant to the Schedule is crystal clear, *Irizarry*, *Muransky* and *Wick* all confirm the district court's interpretation and application of § 627.736(5)(a)2.-5., Fla. Stat.'s reimbursement requirements. Because Allstate reimbursed Revival's lesser charges at a rate less than that required by the PIP statute the district court correctly entered a Final Judgment in favor of Revival.

To the extent Allstate attempts to make this case about its policy, a PIP policy that elects to reimburse charges exclusively pursuant to the Schedule and simultaneously reduce reimbursement of charges submitted that are less than the Schedule at 80% of the charge submitted is in derogation of § 627.736(5)(a)5., Fla. Stat., is impermissibly ambiguous and is against Florida's public policy.

For the reasons set forth herein, this Court should answer the certified question in the negative. Alternatively, as set forth above,

this Court should rephrase the certified question and affirm the district court's interpretation of the PIP statute and its reimbursement requirements.

Respectfully submitted this 14th day of November 2022.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was filed with the clerk of court via the Florida Courts E-Filing Portal and thereby furnished to all counsel of record as follows:

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This 14th day of November 2022.

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CERTIFICATE OF COMPLIANCE

Pursuant to the Florida Rules of Appellate Procedure 9.210(a)(2), I hereby certify that this brief is proportionally spaced, 14-point Bookman Old Style font. Per Microsoft Word software, this brief contains less than maximum word of argument, excluding those pages exempted by Florida Rule of Appellate Procedure, 9.210(a)(5).

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