

**IN THE SUPREME COURT OF THE STATE OF FLORIDA**

**CASE NO. SC22-735  
L.T. CASE NO. 21-10559**

ALLSTATE INSURANCE COMPANY, ET AL, vs. REVIVAL CHIROPRACTIC, LLC

Appellant(s)

Appellee(s)

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**TABLE OF CONTENTS**

	<b><u>Page</u></b>
<b>TABLE OF AUTHORITIES.....</b>	<b>VI</b>
STATEMENT OF THE CASE AND FACTS.....	1
Statement Of The Case .....	1
Statement Of Facts .....	6
A.    The PIP Coverage Provisions Of Allstate’s Insurance Policies .....	7
1.    Reimbursement of Medical Expenses Under Its PIP Policies Is Limited. ....	7
2.    Allstate’s PIP Insurance Policies Require Paying PIP Benefits At 80% Of Billed Medical Expenses, Including When The Billed Amounts Are Less Than The Fee Schedule Amount. ....	8
B.    Revival Chiropractic Submitted Medical Bills To Allstate, Which Allstate Paid In Accordance With The Terms Of Its PIP Insurance Policies. ....	9
C.    Revival Sued Allstate To Recover The 20% Difference Between The Amounts It Billed And The Amounts Allstate Paid.....	9
D.    The Federal District Court Entered Summary Judgment Against Allstate And In Favor Of Plaintiff Revival.....	11
1.    The Federal District Court Held The Language Of Allstate’s PIP Insurance Policies Was Irrelevant. ....	13
2.    The Federal District Court Held That Florida’s PIP Statute Required Allstate To Pay Medical	

Bills That Were Less Than The Statute’s Reimbursement Limitation At 100% Or More Of The Billed Amount.....	13
--	----

**SUMMARY OF ARGUMENT .....16**

**ARGUMENT .....19**

**I. THE FLORIDA LEGISLATURE’S PURPOSE IN ENACTING FLORIDA’S PIP STATUTE WAS TO BENEFIT INSUREDS.....19**

A. The PIP Statute’s Legislative Purpose Was Not To Benefit Medical Providers (Or Insurance Carriers) At The Expense Of Insureds. ....20

B. The PIP Statute Achieves The Legislature’s Purpose Of Benefitting Insureds By Including An Overarching Statutory Mandate That Reasonable Bills Of Medical Providers Are To Be Paid At 80% Of The Billed Amount—Not At 100% Or More.....23

C. The PIP Statute’s 2008 And 2012 Amendments Were Adopted To Ensure That The Statute’s Legislative Purpose Of Benefitting Insureds Was Achieved. ....25

D. Interpreting (Rewriting) The PIP Statute To Require Payment Of 100% Or More Of A Medical Provider’s Bills, Rather Than 80%, Is The Issue Before This Court.....28

**II. ALLSTATE’S INSURANCE POLICIES IMPLEMENTED PIP’S STATUTORY MANDATE TO PAY 80% OF PROVIDERS’ REASONABLE MEDICAL BILLS—NOT THE 100% PAYMENT REVIVAL SEEKS IN ITS LAWSUIT.....31**

A. Allstate’s PIP Policies Are Plain And Unambiguous, And Provide That Reasonable Medical Provider Bills Will Be Paid At No More Than 80%. ....32

B.	Plaintiff Revival Chiropractic Is Seeking To Rewrite Or Void The Terms Of Allstate’s Insurance Policies To Require 100% Payment Of Its Medical Bills, Contrary To The Policies’ Terms.....	33
----	--	----

**III. THE DISTRICT COURT ERRED AS A MATTER OF LAW BY REWRITING BOTH THE PIP STATUTE AND ALLSTATE’S INSURANCE POLICIES TO REQUIRE THAT ALLSTATE PAY 100% OR MORE OF REVIVAL’S MEDICAL BILLS—CONTRARY TO THE PIP STATUTE’S 80% PAYMENT MANDATE. ....34**

A.	The Federal District Court Rewrote The PIP Statute.....	35
1.	The Elimination Of The 80% Payment Provision Rewrite .....	36
2.	The 100% Payment Mandate Rewrite .....	38
3.	The Permissive vs. Mandatory Rewrite.....	38
4.	The Express Prohibition Rewrite.....	40
B.	The Federal District Court’s Justifications For Its Interpretative Rewriting Of The PIP Statute Confirm Its Misinterpretation Of The Statute. ....	41
1.	The “Hypothetical ‘Win-Win-Win’” Justification.....	41
2.	The “Permissive Equals Mandatory” Justification.....	46
3.	The “Florida Legislature Would Have Said So” Justification.....	50
4.	The Federal District Court’s “Permissive vs. Mandatory” Holding Confirms Its Legal Errors.....	52
C.	The Federal District Court’s Interpretative Rewrite Of The PIP Statute Conflicts With The Florida Legislature’s Statutory Purpose And Injures Insureds. ....	55

D. The Federal District Court’s Statutory Interpretation Conflicts With This Court’s <i>MRI Associates</i> Decision, As Well As The 2nd DCA’s Recent July 1, 2022 Decision in <i>Progressive</i> . .....	57
E. Finally, The Federal District Court’s Statutory Interpretation Rewrote Or Voided Allstate’s PIP Insurance Policies.....	61
<b>CONCLUSION.....</b>	<b>62</b>
<b>CERTIFICATE OF COMPLIANCE .....</b>	<b>66</b>

**TABLE OF AUTHORITIES**

**Page(s)**

**Cases**

*Allstate Ins. Co. v. Holy Cross Hosp., Inc.*,  
961 So. 2d 328 (Fla. 2007) .....*passim*

*Allstate Ins. Co. v. Orthopedic Specialists*,  
212 So.3d 973 (Fla. 2017) .....*passim*

*AssociatesMD Medical Group LLC v. Security Nat. Ins. Co.*,  
Case No. COWE21002311, County Court, Broward  
County, Florida (February 25, 2022) .....60

*Atlas Injury Center, Inc. (a/ a/ o Malcolm King Cole) v.*  
*Progressive Am. Ins. Co.*,  
26 Fla. L. Weekly Supp. 409a (Miami-Dade Cty. Ct.,  
July 20, 2018) .....49

*Atwater v. Kortum*,  
95 So. 3d 85 (Fla. 2012) .....28

*Aventura Wellness and Rehab Center (a/ a/ o Beatriz  
Bruce) v. Progressive American Ins. Co.*,  
26 Fla. L. Weekly Supp. 311b (Miami-Dade Cty. Ct.,  
March 14, 2018) .....49

*Bretherick v. State*,  
170 So. 3d 766 (Fla. 2015) .....20

*Columna, Inc. d/ b/ a Thomas Roush, M.D. (a/ a/ o Ashley  
Exantus) v. GEICO Indemnity Company*,  
No. 2016-SC-011754 (Palm Beach Cty. Ct., May 30,  
2018) .....49

*D'Angelo v. Fitzmaurice*,  
863 So. 2d 311 (Fla. 2003) .....16

*Excelsior Ins. Co. v. Pomona Park Bar & Package Store*,  
369 So. 2d 938 (Fla. 1979) .....23

<i>Fla. Dept. of Revenue v. Fla. Mun. Power Agency</i> , 789 So. 2d 320 (Fla. 2001) .....	28, 45
<i>Geico Gen. Ins. Co. v. Virtual Imaging Servs., Inc.</i> , 141 So. 3d 147 (Fla. 2013) .....	<i>passim</i>
<i>Geico Indem. Co. v. Accident &amp; Injury Clinic, Inc.</i> , 290 So. 3d 980 (Fla. 5th DCA 2019) .....	12, 14
<i>Geico Indem. Co. v. Accident &amp; Injury Clinic, Inc., a/a/b Frank Irizarry</i> , Case No. 2018-10031-APCC (Fla. 7th Jud. Cir. Cty. Ct. 2019), .....	47
<i>Geico Indem. Co. v. Muransky Chiropractic P.A.</i> , 323 So. 3d 742 (2021) .....	58
<i>Giamberini v. Dep’t of Fin. Servs.</i> , 162 So. 3d 1133 (Fla. 4th DCA 2015) .....	55
<i>Gov’t Emps. Ins. Co. v. Sacowi Med. Clinic, LLC</i> , No. 2019-CV-000005-A-O (9th Jud. Cir., Orange Cty., Nov. 30, 2020) .....	49
<i>Government Employees Ins. Co. v. Gonzalez</i> , 512 So.2d 269 (Fla. 3d DCA 1987) .....	21
<i>Hands On Chiropractic PL a/ a/o Justin Wick v. GEICO Gen. Ins. Co.</i> , 327 So.3d 439 (2021) .....	57
<i>Harvard ex rel. J.H. v. Vill. of Palm Springs</i> , 98 So. 3d 645 (Fla. 4th DCA 2012) .....	39, 40
<i>Hilton v. State</i> , 961 So. 2d 284 (Fla. 2007) .....	16
<i>Intervest Const. of Jax, Inc. v. General Fidelity Ins. Co.</i> , 133 So. 3d 494 (Fla. 2014) .....	31
<i>Ivey v. Allstate, Ins. Co.</i> , 774 So. 2d 679 (Fla. 2000) .....	21

<i>King v. Allstate Ins. Co.</i> , 906 F.2d 1537 (11th Cir. 1990) .....	61
<i>Kingsway Amigo Ins. Co. v. Ocean Health, Inc.</i> , 63 So.3d 63 (Fla. 4th DCA 2011) .....	47
<i>Lanimore v. State</i> , 2 So. 3d 101 (Fla. 2008) .....	20
<i>Lasky v. State Farm Ins. Co.</i> , 296 So. 2d 9 (Fla. 1974) .....	21
<i>McCloud v. State</i> , 260 So. 3d 911 (Fla. 2018) .....	20
<i>Med. Ctr. of Palm Beaches v. USAA Cas. Ins. Co.</i> , 202 So. 3d 88 (Fla. 4th DCA 2016) .....	21
<i>Miami Medical Group, Inc. v. Auto Club Insurance Company of Florida</i> , No. 2020-006731-SP-26 (County Court, Miami-Dade County, Florida (May 19, 2022) .....	60, 61
<i>MRI Associates of Tampa, Inc. v. State Farm Mut. Auto. Ins. Co.</i> , 334 So. 3d 577 (Fla. 2021) .....	<i>passim</i>
<i>Ocean Chiro. and Health Ctr., Inc. v. State Farm Mut. Auto. Ins. Co.</i> , Case No. COWE20005813, County Court, Broward County, Florida (Dec. 29, 2021) .....	60
<i>Physicians Group, LLC (a/a/o Jimetra West) v. GEICO Indemnity Co.</i> , No. 16-C-019155 (Hillsborough Cty. Ct., Feb. 6, 2017) .....	49
<i>Progressive American Insurance Company v. Back On Track, LLC</i> , 2022 WL 2374660 (Fla. 2nd DCA July 1, 2022) .....	<i>passim</i>

<i>Real Healthcare, Inc. v. State Farm Mut. Auto. Ins. Co., Order Denying Summary Judgment, Case No. COCE 19026173, Cty. Ct., 17th Jud. Cir., (August 20, 2020)</i> .....	48
<i>Reeves v. State, 957 So. 2d 625 (Fla. 2007)</i> .....	20
<i>Revival Chiropractic LLC v. Allstate Insurance Company, et al., 2022 WL 1799759 (11th Cir. June 2, 2022)</i> .....	<i>passim</i>
<i>Richardson v. Richardson, 766 So. 2d 1036 (Fla. 2000)</i> .....	28, 45
<i>River City Medical v. State Farm (Duval County, Jan. 5, 2022)</i> .....	60
<i>Royal Palm Chiropractic &amp; Rehab Center P.A. (a/ a/o Emily Hansen) v. GEICO Insurance Co., No. 2017 SC 009430 (Palm Beach Cty., May 8, 2019)</i> .....	49
<i>Sch. Bd. of Palm Beach Cty. v. Survivors Charter Sch., Inc., 3 So. 3d 1220 (Fla. 2009)</i> .....	55
<i>Smith v. City of Petersburg, 302 So.2d 756 (Fla. 1974)</i> .....	20
<i>Spine &amp; Extremity Rehabilitation Center Inc. (a/ a/o Kristela Jean Baptiste) v. GEICO Indemnity Co., 26 Fla. L. Weekly Supp. 688a (St. Lucie Cty., Sept. 20, 2018)</i> .....	49
<i>State Farm Mut. Auto Ins. Co. v. Menendez, 70 So. 3d 566 (Fla. 2011)</i> .....	31
<i>State Farm Mut. Auto. Ins. Co. v. MRI Assoc. of Tampa, Inc., 252 So. 3d 773 (Fla. 2d DCA 2018), affirmed, 334 So.3d 577 (Fla. Dec. 9, 2021)</i> .....	25

<i>State Farm Mut. Auto. Ins. Co. v. Pridgen</i> , 498 So. 2d 1245 (Fla. 1986) .....	31
<i>Stoletz v. State</i> , 875 So. 2d 572 (Fla. 2004) .....	29
<i>Travelers Indem. Co. v. PCR, Inc.</i> , 889 So. 2d 779 (Fla. 2004) .....	31
<i>Washington Nat. Ins. Co. v. Ruderman</i> , 117 So. 3d 943 (Fla. 2013) .....	31
<i>Winter v. Playa del Sol, Inc.</i> , 353 So.2d 598 (Fla. 4th DCA 1977) .....	20

**Statutes**

28 U.S.C. § 1291 .....	xiv
28 U.S.C. § 1332(a) .....	xiv
28 U.S.C. § 1332(b) .....	xiv
28 U.S.C. § 1332(d) .....	xiii
28 U.S.C. § 1441(a) .....	xiii
28 U.S.C. § 1441(b) .....	xiii
28 U.S.C. § 1446 .....	xiii
28 U.S.C. § 1453 .....	xiii
Fla. Stat. § 627.428 .....	15
Fla. Stat. § 627.736 .....	<i>passim</i>
Fla. Stat. § 627.736(1)(a) .....	<i>passim</i>
Fla. Stat. § 627.736(1)(a)3 .....	21
Fla. Stat. § 627.736(1)(a)4 .....	21
Fla. Stat. § 627.736(5) .....	28

Fla. Stat. § 627.736(5)(a) .....*passim*

Fla. Stat. § 627.736(5)(a)1 .....*passim*

Fla. Stat. § 627.736(5)(a)(1)(5) .....52

Fla. Stat. § 627.736(5)(a)1.f.(1) .....48

Fla. Stat. § 627.736(5)(a)2.f.....26

Fla. Stat. § 627.736(5)(a)(5) .....*passim*

Fla. Stat. § 627.736(5)(a)1.....8

Fla. Stat. § 627.736(a).....2

Fla. Stat. § 627.736(a)(5) .....9

Florida Motor Vehicle No-Fault Law.....*passim*

**Other**

Ch. 2012-197, Laws of Fla., Final Bill Analysis.....22

Department Of Health And Human Services, Publication  
of Office of Inspector General Special Fraud Alerts  
(Federal Register Doc. 94-31157 Filed 12-16-94) .....46

Florida Amendatory Endorsement AU14230-3  
(Ed. 12/15) .....7,8, 9

Fla. Legis., 1977 Summary of General Legislation 141  
(August 1977) .....23, 24

Florida’s Motor Vehicle No-Fault Law (Nov. 2005) .....23

Fla. S. Comm. on Banking & Ins., Report No. 2006-102 .....23

House of Representatives Final Bill Analysis.....27

## **STATEMENT OF THE CASE AND FACTS**

### **Statement Of The Case**

This is a single issue appeal, raising a pure question of law—*i.e.*, the proper statutory interpretation of the Florida Personal Injury Protection Act, Fla. Stat. §627.736, *et seq.* The case arises out of a Summary Judgment decision entered against Allstate in the federal district court for the Middle District of Florida that “declar[ed] that [Allstate] violated Florida law” by not complying with the PIP statute in paying medical providers under the express terms of Allstate’s PIP insurance policies. (DE #94 at 1)<sup>1</sup> In overview, the district court interpreted Florida’s PIP statute to hold that Allstate was statutorily obligated to pay medical bills contrary to the express terms of Allstate’s PIP insurance policies. This appeal raises a pure question of law regarding the proper interpretation Florida’s PIP statute.

The Florida PIP statute at issue provides covered insureds with up to \$10,000 in insurance benefits. It mandates that PIP insurers pay 80% of “reasonable expenses for medically necessary medical,

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<sup>1</sup> Citations are to the federal district court ECF filings.

surgical, X-ray, dental and rehabilitative services....” Fla. Stat. §627.736(1)(a), referred generally hereafter as the 80% payment mandate. The statute provides various examples of methodologies or alternatives for determining what a “reasonable” medical expense is. For example, the insurance carrier can engage in a fact-dependent methodology detailed in §627.736(a). Alternatively, the insurance carrier can “limit reimbursement to 80 percent” of the schedule of maximum charges methodology provided under §627.736(5)(a)(1). The referenced schedule of maximum charges is based upon Medicare fee schedules. (*Id.*) As yet another alternative, and as discussed by this Court in *MRI Associates of Tampa, Inc. v. State Farm Mut. Auto. Ins. Co.*, 334 So. 3d 577, 582-585 (Fla. 2021), an insurer can elect with notice in its policy to adopt a hybrid payment methodology or another alternative payment methodology designed to comply with the PIP statute’s 80% statutory payment mandate.

In its PIP insurance policies at issue here, Allstate put its insureds on notice in writing that it would limit reimbursement for medical expenses in accordance with the PIP statutory fee schedules, but, if a medical bill *was in an amount less than the allowable maximum fee schedules amount*, that Allstate would then pay 80% of

the medical bill. By definition, a medical bill in an amount less than the fee schedule is a reasonable medical expense as defined by the PIP statute.

Plaintiff-Appellee Revival submitted medical bills for reimbursement to Allstate, which was authorized to pay the provider directly because the insureds countersigned the invoices indicating the services were rendered. (See Fla. Stat. §627.736(5)(a)). Revival's bills were for less than the fee schedule amounts. In accordance with its PIP policies, and the PIP statute's 80% overarching payment mandate, Allstate paid 80% of the bills' face amounts.

Revival then brought a class action lawsuit against Allstate, "seeking a judgment [d]eclaring that [Allstate] violated Florida law by paying only [80%] of the charges submitted where the charges submitted were less than the" maximum fee schedule amounts. (DE #47 at 4-5) Revival also sought attorneys' fees under the PIP statute.

Both sides moved for summary judgment. Allstate argued that the 80% mandate in the PIP statute (§627.736(1)(a)) and Allstate's insurance policies governed. Plaintiff-Appellee Revival disagreed. The federal district court accepted Revival's argument that Allstate only had two binary choices when it came to paying provider medical

bills: (i) to pay 80% of the medical bill amount allowed under the governing fee schedule as provided by §627.736(5)(a)(1) of the PIP statute, or (ii) to pay 100% of the medical bill submitted. (DE #47 at 4-10) Thus, under the district court's reading of the PIP statute, insurance companies like Allstate are required to pay 100% or more of medical provider bills whenever those bills are less than the statutory fee schedule amounts, notwithstanding the 80% payment mandate of Section 627.736(1)(a).

Allstate disagreed with the lower court's ruling and moved for reconsideration, explaining that the PIP statute's mandate is to pay no more than 80% of reasonable medical expenses. Fla. Stat. §627.736(1)(a). *See also Geico Gen. Ins. Co. v. Virtual Imaging Servs., Inc.*, 141 So. 3d 147, 155 (Fla. 2013); *Orthopedic Specialists*, 212 So. 3d 973, 976 (Fla. 2017). Given that 80% statutory mandate, Allstate's position was (and is) that the lower court erred by (i) ignoring (or rewriting) the 80% payment terms in Allstate's PIP policies, and (ii) interpreting (or rewriting) the PIP statute to mandate that medical bills in amounts less than the fee schedule be paid at 100% of their face amount, or even more, so as to match the fee schedule amount.

The federal district court denied Allstate's motion for reconsideration. Upon entry of Final Judgment, Allstate appealed to the 11th Circuit. Allstate also moved to certify the question of the PIP statute's proper interpretation to this Court. On June 2, 2022, the 11th Circuit issued its *per curiam* opinion certifying the statutory interpretation question to this Court for resolution, stating among other things that there is "substantial uncertainty" in the Florida court decisions regarding the proper statutory interpretation under the circumstances here, and thus "principles of federalism and comity counsel us not to attempt to divine the answer to this challenging question ourselves." 2022 WL 1799759 at \* 4.

The statutory interpretation question certified by the 11th Circuit Court of Appeals for this Court to decide is as follows:

"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?"

2022 WL 1799759 at \* 4.

Allstate submits that the answer to this question is "yes," based upon the plain unambiguous language of the statute and also as

confirmed by the express terms of Allstate’s PIP insurance policy. But based upon Appellee Revival’s summary judgment motion, the federal district court held “no,” that Allstate’s PIP insurance policies did not comply with but instead violated the PIP statute. The proper interpretation of the Florida PIP statute is thus a pure question of law for this Court to decide.<sup>2</sup>

### **Statement Of Facts**

Jazmine Padin and Natalie Rivera purchased personal injury protection (“PIP”) insurance issued in Florida by Allstate Insurance Company and Allstate Property and Casualty Insurance Company, respectively.<sup>3</sup> (DE #26, at 1) Subsequently, Padin and Rivera were each injured in separate motor vehicle accidents. (*Id.*) Plaintiff Revival Chiropractic provided each with medical treatment. (*Id.* at 2) The medical services Revival provided were covered under Allstate’s PIP insurance policies, subject to the policies’ terms and limitations.

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<sup>2</sup> The 11th Circuit’s June 2 Order also states that “our statement of the question certified does not ‘limit the inquiry’ of the Supreme Court of Florida or restrict its consideration of the issues that it perceives are raised by the record certified in this case.” 2022 WL 1799759 at \* 4.

<sup>3</sup> Both Allstate companies are collectively referred to as Allstate.

(*Id.* at 2) Ms. Padin and Ms. Rivera assigned their rights and benefits under their Allstate policies to Revival. (*Id.*)

**A. The PIP Coverage Provisions Of Allstate’s Insurance Policies**

Allstate’s PIP insurance policies provide for reimbursement of 80% of reasonable medical expenses arising from covered injuries:

“In accordance with the Florida Motor Vehicle No-Fault Law, [Allstate] will pay to or on behalf of the **injured person** the following benefits. . . . .

a. 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 . . . . .”

(DE #26 at 2, quoting the Florida Amendatory Endorsement AU14230-3 (Ed. 12/15) (emphasis added).) Under the policies’ co-pay provision, the insured is responsible for the remaining 20% of reasonable expenses.

**1. Reimbursement of Medical Expenses Under Its PIP Policies Is Limited.**

Allstate’s policies provide that benefit payments are subject to (among other things) a reimbursement limitation of 80% of a

“schedule of maximum charges” (also known as “fee schedules”) authorized by the PIP statute:

***“The methodology for determining the amount [Allstate] 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 in the 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 in the law):”***

(DE #26 at 2-3, quoting the Florida Amendatory Endorsement AU14230-3 (Ed. 12/15) (emphasis in original).<sup>4</sup>

## **2. Allstate’s PIP Insurance Policies Require Paying PIP Benefits At 80% Of Billed Medical Expenses, Including When The Billed Amounts Are Less Than The Fee Schedule Amount.**

Allstate’s PIP policies specify that any medical provider charging less than the reimbursement limitations allowed under the statute will be paid at 80% of the billed amount:

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<sup>4</sup> In this brief, “reimbursement limitation” refers to the maximum amount allowed under Fla. Stat. § 627.736(1)(a) or under Fla. Stat. § 627.736(5)(a)1, as well as under the provisions of Allstate’s policy—*i.e.*, 80% of the “schedule of maximum charges” or of reasonable medical expenses, whichever amount is less. See DE #26 at 2-3.

**“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, [Allstate] will pay eighty percent of the charge that was submitted.”**

(DE #26 at 3, quoting the Florida Amendatory Endorsement AU14230-3 (Ed. 12/15) (emphasis added).

**B. Revival Chiropractic Submitted Medical Bills To Allstate, Which Allstate Paid In Accordance With The Terms Of Its PIP Insurance Policies.**

Revival submitted medical bills to Allstate for the treatment Revival provided to Padin and Rivera. (DE #26 at 4); *see also* Fla. Stat. §627.736(a)(5). For example, Revival billed \$100 for treatment under CPT code 99292. (DE #26 at 4.) According to Allstate’s policies (and §627.736(5)(a)1), reimbursement of expenses for that code was limited to \$119.94 (*i.e.*, 80% of the fee-schedule amount \$149.92). (DE # 26 at 4) Under the terms of its PIP policies and, as provided for in the PIP statute, Allstate paid 80% of the amount billed (\$80.00) because the amount billed (\$100) was less than the reimbursement limitation. (*Id.*)

**C. Revival Sued Allstate To Recover The 20% Difference Between The Amounts It Billed And The Amounts Allstate Paid.**

“Neither Padin nor Rivera paid [plaintiff] Revival the remaining 20%” of the amount charged by Revival, or any copay. (DE #26 at 4) Dissatisfied with Allstate’s payment of 80% of its medical bills, Revival filed a declaratory judgment class action against Allstate claiming that, notwithstanding the explicit language of Allstate’s PIP insurance policies, Allstate had “violated Florida law by paying only 80% [and not 100%] of the charges submitted where the charges submitted were for less than the amounts allowed pursuant to Fla. Stat. § 627.736(5)(a)1.” (DE #1, Exh. 1; DE #26 at 1, 4-5, 6-7)

Allstate removed the complaint to federal court, answered the complaint denying Revival’s claims, and explained that its PIP insurance policies were consistent with and implemented Florida’s PIP statute, including the statute’s overarching mandate to pay medical providers no more than 80% of reasonable charges. (DE #15; §627.736(1)(a))

**D. The Federal District Court Entered Summary Judgment Against Allstate And In Favor Of Plaintiff Revival.**

Both parties moved for summary judgment. The federal district court denied Allstate's summary judgment Motion, but granted Plaintiff Revival's. (DE #47 at 11, n.3)

The district court began its March 5, 2020 Summary Judgment Order by explaining that, under Florida's PIP's statute, "an automobile operator is [required] to carry PIP insurance that provides up to \$10,000 in combined medical expense and lost wage coverage in the event of an auto accident. See Fla. Stat. §627.736(1)(a)." (DE #47 at 1) The court agreed that "the PIP statute [also] mandates that every PIP insurer reimburse the insured for '[e]ighty percent of reasonable expense for medically necessary medical, surgical, X-ray, dental, and rehabilitative services...within [fourteen] days after [a] motor vehicle accident.'" (*Id.*)

The issue giving rise to this lawsuit is whether, when the medical provider's bill *is less than the reimbursement limitation*, the insurance company must pay a medical provider 100% of its billed amount for medical services, or, whether the bills are subject to the 80% payment limitation as provided for in the PIP statute and

separately in Allstate's PIP insurance policies. Plaintiff argued, and the district court agreed and held that, under Subparagraph 5 (Fla. Stat. §627.736(5)(a)(5)), if medical bills submitted to Allstate are for less than the reimbursement limitations set pursuant to Subparagraph 1 (Fla. Stat. §627.736(5)(a)1)—*i.e.*, less than 80% of the schedule of maximum charges identified in the statute--then Allstate (and other insurance carriers) are obligated to pay 100% of the billed amount. According to the district court:

“[I]f a provider submits a bill for less than the amount allowed under § 627.736(5)(a)(1)—that is, a bill for less than 80 percent of amount allowed under the Schedule—then § 627.736(5)(a)(5) permits the insurer ‘to pay the lower billed amount in full.’ See *Geico Indem. Co. v. Accident & Injury Clinic, Inc.*, 290 So. 3d 980 (Fla. 5th DCA 2019) (analyzing §§ 627.736(5)(a)(1) and 627.736(5)(a)(5)), reh’g denied Feb. 26, 2020.”

(DE #47 at 9; *see also* Pl.’s Am. Mot. for Summ. J., DE #29 at 10.)

The federal district court thus held as a matter of law that, when the amount billed was less than the maximum amount allowed according to the statutory schedules, Allstate was obligated to pay 100% of the billed amounts, and that Allstate had violated the PIP statute by paying only 80% of the amounts billed. Allstate disagreed based on the plain language of both the Florida PIP statute as well as

its PIP insurance policies, explaining that an insurance company is *never required to pay* the full (100%) amount billed, but instead, the mandated 80% reimbursement limitation applies to all bills submitted—period. See Fla. Stat. §627.736(1)(a).

**1. The Federal District Court Held The Language Of Allstate’s PIP Insurance Policies Was Irrelevant.**

The federal district court did not dispute that under Allstate’s PIP insurance policies as written, Allstate’s payment of 80% of Revival’s bills was proper. But it held that Allstate’s compliance with its PIP policies did not matter, as Revival was not asserting a breach of contract claim. (DE #47 at 7) According to the district court, “the crux of this case and Revival’s argument...centers on whether Allstate pays its claims in accordance with the PIP statute.” (*Id.* at 6)

**2. The Federal District Court Held That Florida’s PIP Statute Required Allstate To Pay Medical Bills That Were Less Than The Statute’s Reimbursement Limitation At 100% Or More Of The Billed Amount.**

The district court held that if an insurance company elects to limit reimbursement according to the fee schedules, then it is subject to Fla. Stat. §627.736(5)(a)5, which provides that

“If a provider submits a charge for an amount less than the amount allowed under subparagraph 1., the insurer may pay the amount of the charge submitted.”

(DE #47 at 9) (Quoting Fla. Stat. §627.736(5)(a)(5)). In other words, “if a provider submits a bill . . . for less than 80 percent of amount allowed under the Schedule—then §627.736(5)(a)(5) **permits** the insurer ‘to pay the lower billed amount in full.’ See *Geico Indem. Co. v. Accident & Injury Clinic, Inc.*, 290 So. 3d 980 (Fla. 5th DCA 2019) (analyzing §§ 627.736(5)(a)(1) and 627.736(5)(a)(5)), reh’g denied Feb. 26, 2020.” (DE #47 at 9 (emphasis supplied).)

But having interpreted the PIP statute as “permit[ting]” an insurance company to pay a medical provider’s bill in full, the district court nevertheless concluded that “Allstate’s practice of paying 80 percent of lower billed amounts violated the plain language of the PIP statute.” (DE #77 at 3; DE #78 at 3) The court ruled that, for bills less than 80% of the schedule of maximum charges, “Allstate *must pay* either 80 percent of the Schedule or the full lower billed amount.” (*Id.* (emphasis added).)

Based upon its mandatory—not permissive—payment interpretation of §627.736(5)(a)5, the district court granted Revival summary judgment. (DE #47 at 11) Pursuant to Fla. Stat. §§

627.736(5)(a)1. and 627.736(5)(a)5, the court held that Allstate had violated the PIP statute by paying 80% of the \$100 charge, and should have paid either \$119.00 (80% of the maximum fee-schedule), or \$100.00, which is the full amount charged. (DE #47 at 11 n.3.)

The Summary Judgment Order was not yet a final judgment, however, because plaintiff Revival sought to certify a class, and Allstate also moved for reconsideration. The district court entered an order (DE #77) denying Allstate's motion for reconsideration of its March 5, 2020 Summary Judgment Order (DE #69), and denied plaintiffs' motion and renewed motions for class certification (DE #78; DE #92). (The class certification question under Federal Rule of Civil Procedure 23 is not relevant to Allstate's appeal here.)

The district court entered a final judgment of the entire action on January 22, 2021. (DE #93) In it, the court "declar[ed] that [Allstate] violated Florida law as set forth in the court's Order dated March 5, 2020," and that Allstate must pay Plaintiff's reasonable attorneys' fees pursuant to FLA. STAT. §§ 627.428 and/or 627.736(8)...." (DE #94 at 1)

Allstate appealed to the 11th Federal Circuit Court of Appeals on February 18, 2021 (DE #99). Allstate moved to certify the PIP

statutory interpretation question to this Court on March 17, 2021; Revival subsequently did the same on March 19. But the 11th Circuit denied the two Motions to Certify on March 29, 2021, and directed its Merits Panel to hear them. The Merits Panel heard oral argument on Allstate’s appeal and the Motions to Certify on May 20, 2022, in Miami. On June 2, the Federal Court of Appeals issued its *per curiam* Opinion certifying the PIP statutory interpretation question to this Court for resolution. 2022 WL 1799759.

### **SUMMARY OF ARGUMENT**

The issue on appeal is a legal question of statutory interpretation. This Court’s review is *de novo*. See, e.g., *D’Angelo v. Fitzmaurice*, 863 So. 2d 311, 314 (Fla. 2003) (“The standard of review for the pure questions of law before us is *de novo*. . . . Therefore, no deference is given to the judgment of the lower courts.”); *Hilton v. State*, 961 So. 2d 284, 288, 299 (Fla. 2007) (Same); *Allstate Ins. Co. v. Holy Cross Hosp., Inc.*, 961 So. 2d 328, 331 (Fla. 2007) (“Because the conflict issue requires this Court to interpret provisions of the Florida Motor Vehicle No–Fault Law (No–Fault Law), the standard of review is *de novo*.”); *Orthopedic Specialists*, 212 So. 3d at 975 (Same).

In holding Allstate to have violated the PIP statute by paying 80% of medical provider Revival's bills when those bills were less than the maximum fee schedule amount, the federal district court's reasoning reflects three broad errors of law.

**First**, under the guise of statutory interpretation, the court rewrote the PIP statute, contrary to the statute's plain terms as well as decisions of this Court, including *MRI Associates, supra*. The district court thus read the statute to require insurance companies such as Allstate to pay 100% or more of medical provider bills that are less than the statutory fee schedules. But this rewriting of the statute is contrary to the PIP statute's overarching 80% payment mandate (§627.736(1)(a)).

**Second**, the federal district court erroneously interpreted the PIP statute to benefit medical providers at the expense of PIP insureds. Thus, under that court's holding, the insurance benefits available to insureds will be reduced because 100% of medical provider bills, rather than the current 80%, will be paid by the insurance company, thereby decreasing insureds' remaining benefits by the extra 20% paid to the provider.

**Last**, the district court erroneously interpreted the PIP statute contrary to the Florida Legislature’s statutory purposes, not only to the detriment of insureds by providing them with less coverage, but also by increasing insurance costs and premiums over time given the new judicial mandate to pay 100% (or more) of certain medical bills.

In addition, two recent decisions—one by this Court and the other by the 2nd DCA—cannot be reconciled with the federal district court’s reasoning and interpretation of the PIP statute adverse to Allstate. Thus, last December, this Court in *MRI Associates, supra*, issued an opinion that, in the words of the 11th Federal Circuit Court of Appeals “undermined—but did not directly repudiate” the “reasoning” of lower court authorities which had interpreted the PIP statutory provisions at issue adversely to Allstate. Then, just last month, the 2nd DCA relied on *MRI Associates* as well as the PIP statute’s plain, unambiguous language to reject the same arguments and statutory interpretation accepted by the federal district court in our case, and held instead that another insurance carrier, Progressive, was correct in reimbursing medical provider’s bills at the 80% statutory mandate level even when such bills were less than the

fee schedule amounts. *Progressive American Insurance Company v. Back On Track, LLC*, 2022 WL 2374660 (Fla. 2nd DCA July 1, 2022).

Revival's lawsuit, in short, is not attempting to enforce Allstate's PIP insurance policies as written. Instead, Revival asked the federal district court to interpret the PIP statute to impose mandatory 100% payment requirements on insurance carriers that benefit providers, not insureds. Because such an outcome conflicts with both the PIP statute's plain text and Allstate's policies, and also injures insureds contrary to the Florida legislature's purposes in enacting the statute, this Court should answer the certified question in the affirmative, and hold that the PIP statute permits an insurer to pay 80% of the medical charges when such charges are less than the fee schedules.

## **ARGUMENT**

### **I. THE FLORIDA LEGISLATURE'S PURPOSE IN ENACTING FLORIDA'S PIP STATUTE WAS TO BENEFIT INSUREDS.**

A basic rule of statutory construction is that a statute must be interpreted consistent with and in furtherance of its legislative

purposes, not in contradiction of such purposes. *Smith v. City of Petersburg*, 302 So.2d 756, 757 (Fla. 1974).<sup>5</sup>

Central to recognizing the federal district court’s misinterpretation of the PIP statute in this case is understanding the Florida Legislature’s purposes in adopting the PIP statutory provisions at issue, and also appreciating precisely how the lower court’s Summary Judgment decision against Allstate—which rewrote the PIP statute’s plain text—is contrary to what the Legislature intended and sought to achieve.

**A. The PIP Statute’s Legislative Purpose Was Not To Benefit Medical Providers (Or Insurance Carriers) At The Expense Of Insureds.**

The Florida Legislature adopted the personal injury protection (“PIP”) provisions of the Motor Vehicle No-Fault Law to benefit consumers, that is, insureds. To achieve the Legislature’s goals, the

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<sup>5</sup> Statutory interpretation that results in frustration of statutory purpose is to be avoided. *Bretherick v. State*, 170 So. 3d 766, 772 (Fla. 2015); *Reeves v. State*, 957 So. 2d 625, 629 (Fla. 2007). Also to be avoided is a statutory interpretation leading to absurd results. See, e.g., *Winter v. Playa del Sol, Inc.*, 353 So.2d 598, 599 (Fla. 4<sup>th</sup> DCA 1977). See generally *McCloud v. State*, 260 So. 3d 911, 914 (Fla. 2018) (“[L]egislative intent is the polestar that guides a court’s statutory construction analysis.”); *Lanimore v. State*, 2 So. 3d 101, 106 (Fla. 2008) (Same).

PIP statute mandates that insureds receive a minimum amount of insurance coverage protection. PIP medical benefits are capped at \$10,000 upon proper certification “that the injured person had an emergency medical condition.” Fla. Stat. §627.736(1)(a)3. Otherwise, benefits are limited to \$2,500. *See id.* §627.736(1)(a)4.; *Med. Ctr. of Palm Beaches v. USAA Cas. Ins. Co.*, 202 So. 3d 88 (Fla. 4th DCA 2016). “Without a doubt, the purpose of the no-fault statutory scheme is to ‘provide swift and virtually automatic payment so that the injured insured may get on with his life without undue financial interruption.’” *Ivey v. Allstate, Ins. Co.*, 774 So. 2d 679, 683-84 (Fla. 2000) (quoting *Government Employees Ins. Co. v. Gonzalez*, 512 So. 2d 269, 271 (Fla. 3d DCA 1987)). The PIP statute also provides insureds with ready access to the insurance benefits provided. *Virtual Imaging*, 141 So. 3d at 152. And the statute was intended to reduce both medical care costs and insurance premiums, thereby expanding coverage to insureds at a lesser expense. *Lasky v. State Farm Ins. Co.*, 296 So. 2d 9, 17 (Fla. 1974).

In sum, Florida’s Legislature adopted the PIP statute 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 when doing so. *See, e.g., Holy Cross*, 961 So. 2d at 336.

Significantly, the Legislature’s statutory purpose was not to benefit medical providers, particularly at the expense of and to the detriment of insureds. *See, e.g., Virtual Imaging*, 141 So. 3d at 153 (Legislature’s policy decision to “regulate the amount providers could charge PIP insurers and policyholders for the medically necessary services PIP insurers are required to reimburse.”); *see also* Ch. 2012-197, Laws of Fla., Final Bill Analysis at 6-7 (describing increase in PIP claims linked to misuse of the PIP system by medical providers, especially chiropractors and similar providers); Fla. Stat. § 627.736(5)(a) (“A physician, hospital, clinic, or other person or institution lawfully rendering treatment to an injured person for a bodily injury covered by personal injury protection insurance may charge the insurer and injured party only a reasonable amount....”). Reasonableness is “the heart” of PIP coverage and all PIP coverage is subject to that “mandate.” *See Orthopedic Specialists*, 212 So. 3d at 977.

Thus, when interpreting the PIP statute, any ambiguities are to be construed in favor of the insured—not in favor of medical providers

at the insureds' expense. *See, e.g., Orthopedic Specialists*, 212 So. 3d at 976; *Excelsior Ins. Co. v. Pomona Park Bar & Package Store*, 369 So. 2d 938, 942 (Fla. 1979) (“Moreover, even were we to find that the policy is ambiguous, . . . we would still have to prefer [the insurer’s] interpretation because it maintains the widest range of coverage and is therefore actually the more favorable to the insured.”).

**B. The PIP Statute Achieves The Legislature’s Purpose Of Benefitting Insureds By Including An Overarching Statutory Mandate That Reasonable Bills Of Medical Providers Are To Be Paid At 80% Of The Billed Amount—Not At 100% Or More.**

The PIP statute’s overarching statutory mandate as set forth in Section 627.736(1)(a) is that reasonable medical bills submitted by providers are to be paid at 80% of the billed amount—period. Limiting payment to 80% of reasonable medical expenses is fundamental to the PIP statute, and has been since 1977 when the statute was amended to address skyrocketing premiums.<sup>6</sup> The 80%

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<sup>6</sup> The Florida No-Fault Law was enacted in 1971 and initially covered all reasonable medical expenses. In 1977, the Legislature responded to skyrocketing premiums by amending the statute. Fla. S. Comm. on Banking & Ins., Report No. 2006-102, Florida’s Motor Vehicle No-Fault Law (Nov. 2005), available at [http://archive.flsenate.gov/data/publications/2006/senate/reports/interim\\_reports/pdf/2006-102bilong.pdf](http://archive.flsenate.gov/data/publications/2006/senate/reports/interim_reports/pdf/2006-102bilong.pdf) (last accessed May 12, 2021) [hereinafter S. Report] at pp. 7, 10-12; Fla. Legis., 1977

limitation corresponded to a required rate reduction, making policies more affordable.<sup>7</sup> In fact, this Court has held that the PIP mandate in Section 627.736(1)(a) requiring an insurer to pay 80% of all reasonable medical expenses “is the heart of the PIP statute’s coverage requirements.” *Virtual Imaging*, 141 So. 3d at 155; *see also Orthopedic Specialists*, 212 So. 3d at 976 (“[T]he PIP statute sets forth a basic coverage mandate: every PIP insurer is required to—that is, the insurer ‘shall’—reimburse eighty percent of reasonable expenses for medically necessary services.”).

Nothing in the PIP statute, its legislative history, or in any decision of the Florida Supreme Court suggests that insurers are required to pay medical provider bills at 100% (or more), rather than

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Summary of General Legislation 141 (August 1977), at p. 142. The Florida Legislature mandated that PIP medical coverage pay “[e]ighty percent of all reasonable expenses,” and required insurers providing benefits which had been reduced by the legislation to pass along a corresponding rate reduction to insureds in proportion to the benefits reduction. Ch. 77-468, §33(1)(a) & (c), Law of Fla. (codified at § 627.736(1)(a), Fla. Stat.); *see also* S. Report at 11 & n. 32. Requiring insurers to pay more than 80% in exchange for the imposed reduced premium that was based on the 80% mandate is contrary to that amendment and manifestly unfair.

<sup>7</sup> *See* n. 6, *supra*.

80%. See *Holy Cross*, 961 So. 2d at 335 (payment at a reduced rate does not violate subsection (1)(a) so long as the insurer pays ‘eighty percent of all *reasonable expenses*.’ § 627.736(1)(a), Fla. Stat. (emphasis supplied).”). In fact, the statute’s 2012 amendment established that “the reasonable charge and schedule of maximum charges methodologies are no longer coequal subsections of 627.736(5)(a)” so that “there are no longer two mutually exclusive methodologies for calculating the reimbursement payment owed by the insurer.” *State Farm Mut. Auto. Ins. Co. v. MRI Assoc. of Tampa, Inc.*, 252 So. 3d 773, 778 (Fla. 2d DCA 2018), *affirmed*, 334 So. 3d 577 (Fla. 2021).

**C. The PIP Statute’s 2008 And 2012 Amendments Were Adopted To Ensure That The Statute’s Legislative Purpose Of Benefitting Insureds Was Achieved.**

According to this Court, the PIP statutory provisions at issue here were designed to control the amounts medical providers could charge:

“The provision in the PIP statute authorizing insurers to limit reimbursements for medical services rendered pursuant to the Medicare fee schedules, which is at issue in this case, has its genesis in a series of changes the Legislature made to the PIP statute, beginning in 2001, that were designed to regulate the amount providers could charge PIP insurers and policyholders for the medically

necessary services PIP insurers are required to reimburse.”

*Virtual Imaging*, 141 So. 3d at 153. This followed decades of costly litigation between medical care providers and insurance companies over how to calculate the 80% amount and what are or what are not “reasonable” expenses for medically necessary services under §627.736(1)(a). The disputes and litigation led to increased premiums and higher medical care costs.

The Florida Supreme Court explained that the option to limit reimbursements according to the Medicare and other fee schedules is “permissive” not mandatory. *Virtual Imaging*, 141 So.3d at 150, 156-57; *Orthopedic Specialists*, 212 So. 3d at 977. But the Court also held that the permissive nature of the fee-schedule limitations required notice in the policy if the insurers elected to use those limitations:

“Because the fee schedule provision of Section 627.736(5)(a)2.f. [now 627.736(5)(a)(1)] is permissive and not mandatory, and because the Medicare fee schedules are not the only mechanism for calculating reimbursements, ... the insurer cannot take advantage of the Medicare fee schedules to limit reimbursements without notifying its insured by electing those fee schedules in its policy.”

*Id.*

The Legislature was of the same view, and in 2012 amended the statute further to require notice in the insurance policy before an insurer could exercise its option under subparagraph 1 to limit reimbursements by the fee schedules. See §627.736(5)(a)(5). The Legislature also added a permissible exception to the 80% payment mandate for insurers when bills were less than the reimbursement limitation: “If a provider submits a charge for an amount less than the amount allowed under subparagraph 1., the insurer may pay the amount of the charge submitted.” §627.736(5)(a)(5).<sup>8</sup>

Significantly, nothing in the PIP statute’s legislative history, much less in its 2008 and 2012 PIP amendments, suggests there would be circumstances in which insurers would be *required* to pay 100% or more of a medical provider’s bill, instead of the overarching 80% payment limitation that is the “heart of the PIP statute’s

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<sup>8</sup> It is clear that the legislative intent behind the amendments to the PIP statute were to curb the rising costs paid by PIP insurers and, correspondingly, lower insurance premiums for Florida policyholders. House of Representatives Final Bill Analysis, p. 14, available at <https://myfloridahouse.gov/Sections/Documents/loadaddoc.aspx?FileName=h0119z1.INBS.DOCX&DocumentType=Analysis&BillNumber=0119&Session=2012> (last accessed May 12, 2021).

coverage requirements.” *Virtual Imaging*, 141 So. 3d at 155. Likewise, nothing in the 2008 or 2012 amendments suggests that Section 627.736(5) of the PIP statute created a mandatory 100% pay exception to the 80% limitation on the payment of reasonable medical expenses—a limitation established to make insurance more affordable and to make benefits last longer. It is implausible that the Florida Legislature would, *sub silentio*, make such a fundamental change to PIP coverage, particularly one that leads to mandatory 100% reimbursements contrary to the interests of insureds and serving no apparent policy objective.

**D. Interpreting (Rewriting) The PIP Statute To Require Payment Of 100% Or More Of A Medical Provider’s Bills, Rather Than 80%, Is The Issue Before This Court.**

Statutes should be enforced as written. *Atwater v. Kortum*, 95 So. 3d 85, 90 (Fla. 2012). Statutes are not subject to being rewritten under the guise of statutory “interpretation.” *Fla. Dept. of Revenue v. Fla. Mun. Power Agency*, 789 So. 2d 320, 324 (Fla. 2001) (“[C]ourts cannot judicially alter the wording of statutes where the Legislature clearly has not done so.”); *Richardson v. Richardson*, 766 So. 2d 1036, 1042 (Fla. 2000) (Same). This is particularly true where the

statutory rewrite conflicts with the Legislature’s statutory goals. *Id.* (Rejecting construction that “would clearly contravene the Legislature’s stated purpose”); *see also Stoletz v. State*, 875 So. 2d 572, 576 (Fla. 2004) (“The courts ‘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*.”) (emphasis in original); *Progressive*, 2022 WL 2374660 at \*12 (same).

In this case, Allstate’s position is that it complied with the PIP statute by paying Revival’s medical bills in accordance both with the PIP statute’s 80% mandate as well as with Allstate’ insurance policies. But Revival and the federal district court disagreed, holding Allstate was required to pay 100% (or more) of Revival’s medical bills. Thus, the key question this Court should resolve, as phrased by the 11th Circuit in its June 2, 2022 Certification Order, is:

“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?”

*Revival Chiropractic LLC v. Allstate Insurance Company, et al.*, 2022 WL 1799759, \*3 (11th Cir. June 2, 2022). Or to phrase the statutory

question slightly differently as Allstate does, mindful of the 11th Circuit's observation (*supra*) that its "statement of the question certified does not limit the inquiry" of this Court:

Is an insurer (Allstate in this case) in compliance with Fla. Stat. § 627.736(5)(a) where its personal injury protection policies provide that it will reimburse medical providers 80% of the amount billed, or 80% of the maximum charges set forth in the statute, whichever is less?

Revival's answer to either question is that, regardless of what Allstate's insurance policies expressly state, Allstate is obligated by the PIP statute to pay 100% (or more) of its medical bills. Allstate's position, in contrast, is that the PIP statute's 80% overarching reimbursement mandate in Section 627.736(1)(a) governs, and that under Allstate's insurance policies, its only obligation is to pay 80% of medical provider Revival's reasonable medical bills. Resolution of this question of statutory interpretation depends upon whether Revival's claims and the district court's reasoning are consistent with, or contrary to, (i) the PIP statute's text as well as with the Florida Legislature's purpose for enacting the PIP statute and its amendments, and (ii) this Court's recent decision in *MRI Associates*.

## **II. ALLSTATE’S INSURANCE POLICIES IMPLEMENTED PIP’S STATUTORY MANDATE TO PAY 80% OF PROVIDERS’ REASONABLE MEDICAL BILLS—NOT THE 100% PAYMENT REVIVAL SEEKS IN ITS LAWSUIT.**

When interpreting an insurance contract, a basic rule of contractual interpretation is that “[w]here the language in an insurance contract is plain and unambiguous, a court must interpret the policy in accordance with the plain meaning so as to give effect to the policy as written.” *Orthopedic Specialists*, 212 So. 3d at 975-96 (quoting *Washington Nat. Ins. Co. v. Ruderman*, 117 So. 3d 943, 948 (Fla. 2013)); *State Farm Mut. Auto Ins. Co. v. Menendez*, 70 So. 3d 566, 569-570 (Fla. 2011) (quoting *Travelers Indem. Co. v. PCR, Inc.*, 889 So. 2d 779, 785 (Fla. 2004)). A corollary rule is that a court may not rewrite a contract under the guise of interpreting it. *See, e.g., Intervest Const. of Jax, Inc. v. General Fidelity Ins. Co.*, 133 So. 3d 494, 499 (Fla. 2014); *State Farm Mut. Auto. Ins. Co. v. Pridgen*, 498 So. 2d 1245, 1248 (Fla. 1986).

Here, the federal district court refused to enforce the plain and unambiguous language of Allstate’s insurance policies. Instead, the court either implicitly rewrote or found the language of Allstate’s

insurance policies unenforceable under the PIP statute. (DE #47 at 6-7; DE #77 at 3; DE #78 at 3)

**A. Allstate’s PIP Policies Are Plain And Unambiguous, And Provide That Reasonable Medical Provider Bills Will Be Paid At No More Than 80%.**

Allstate’s insurance policy language is plain and unambiguous. Its PIP policies (i) provide insureds with PIP benefits that are reimbursed at 80% of reasonable medical expenses, and (ii) limit reimbursement to 80% of the schedule of maximum charges authorized by the PIP statute. (DE #26 at 2-3)

In addition, Allstate’s policies plainly state they will only pay 80% of the amount billed for reasonable medical services if a provider submits a bill for an amount less than the statutory schedule of maximum charges:

“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, [Allstate] will pay eighty percent of the charge that was submitted.”

(DE #26 at 3, ¶10)

Allstate paid Revival in accordance with the express terms of its PIP policies. (*Id.* at 3-4 ¶¶ 11-16) Thus, focusing on Allstate’s PIP

insurance policies alone, it is undisputed that Allstate complied with them when it paid Revival 80% of the medical bills.

**B. Plaintiff Revival Chiropractic Is Seeking To Rewrite Or Void The Terms Of Allstate's Insurance Policies To Require 100% Payment Of Its Medical Bills, Contrary To The Policies' Terms.**

Given that Allstate's insurance policies provide for payment of 80% of covered medical bills, not 100%, Revival's lawsuit seeks either to void the governing language of Allstate's policies, or alternatively, to rewrite them to require 100% payment of Revival's medical bills. Again, the district court's Summary Judgment Order makes this clear: "[T]his case centers on whether Allstate pays its claims in accordance with the PIP statute. ... [T]he answer to that question *will ultimately bear on the validity of the language in Allstate's policy....*" (DE #47 at 6-7 (emphasis added)) And: "[T]he Court agrees with Revival" that "the PIP statute only provides the insurer with two options for payment. The insurer may pay 80 percent of amount allowed under the Schedules, or it if is [sic] less, the *full amount* of the charge submitted." (*Id.* at 7 (emphasis added))

In sum, Revival's lawsuit seeks not to claim benefits under Allstate's PIP insurance policies as written. Instead, Revival seeks to

have the courts void or rewrite those policies to require Allstate to pay 100% not 80% of the medical bills submitted, notwithstanding the PIP statute's 80% payment mandate. Fla. Stat. §627.736(1)(a). See also *Virtual Imaging*, 141 So. 3d at 155; *Orthopedic Specialists*, 212 So. 3d at 976.

**III. THE DISTRICT COURT ERRED AS A MATTER OF LAW BY REWRITING BOTH THE PIP STATUTE AND ALLSTATE'S INSURANCE POLICIES TO REQUIRE THAT ALLSTATE PAY 100% OR MORE OF REVIVAL'S MEDICAL BILLS—CONTRARY TO THE PIP STATUTE'S 80% PAYMENT MANDATE.**

When Revival submitted medical bills to Allstate that were less than the fee schedule amounts, Allstate paid Revival 80% of the billed amounts—precisely as provided by Allstate's PIP insurance policies. But the federal district court held as a matter of law that Allstate's *only* options under the PIP statute were to pay 100% of Revival's bills, or up to nearly 120% of those bills. (DE #47 at 11, n. 3) In so ruling, the court explained that it “agree[d]” with Revival's argument, that “when the [Fee] Schedule is elected through proper notice and a provider submits a Lesser Charge, *the PIP statute only provides the insurer with two options for payment.* The insurer may pay 80 percent

of amount allowed under the Schedule, or it if [sic] is less, the full amount of the charge submitted.” (DE #47 at 7; emphasis added)

The district court’s Summary Judgment decision raises a purely legal question of statutory interpretation and, Allstate submits, constitutes a legally erroneous interpretation of the PIP statute by *requiring* insurance companies to pay 100% or more of a medical provider’s bills—contrary to the PIP statute’s 80% overarching payment mandate contained in Section 627.736.

**A. The Federal District Court Rewrote The PIP Statute.**

As discussed above in Section I, *supra*, to achieve the Florida Legislature’s goal of controlling and reducing medical care costs, the PIP statute mandates that an insurance company pay no more than 80% of reasonable medical expenses. The statute contains no exception providing for a *mandatory* 100% payment of a provider’s medical bills.

Nevertheless, the district court interpreted (rewrote) the PIP statute to create such an exception by requiring payment of 100% or more of certain medical bills. (DE #47) According to that court, “the PIP statute provides two methodologies for calculating the reimbursement of reasonable medical expenses: (1) the fact

dependent inquiry methodology; and (2) the schedule of maximum charges methodology,” the latter being the Medicare and other fee schedules. (*Id.* at 8) Because Allstate allegedly adopted only the fee schedule methodology in its PIP insurance policies, the district court held Allstate had obligated itself to pay medical bills either at the maximum fee schedule amounts, or if the medical bills are less than those scheduled amounts, then Allstate must pay 100% of the bill. The district court did not explain the source of these mandatory “options,” stating only that the statute was clear and unambiguous:

“Upon review of PIP statute as a whole, the Court finds that these provisions are clear and unambiguous, and no statutory construction is required. Section 627.736(5)(a)(1) plainly authorizes an insurer ‘to limit reimbursement to 80 percent’ of a ‘schedule of maximum charges.’ [Citation omitted] ... However, if a provider submits a bill for less than the amount allowed under § 627.736(5)(a)(5)—that is, a bill for less than 80 percent of amount allowed under the Schedule—then § 627.736(5)(a)(5) permits the insurer ‘to pay the lower billed amount in full.’”

(DE #47 at 9)

As discussed below, four legal errors infect the federal district court’s reasoning and interpretation of the PIP statute.

### **1. The Elimination Of The 80% Payment Provision**

**Rewrite:** Under the guise of statutory interpretation, the district

court rewrote the PIP statute to eliminate the overarching 80% payment term. In this regard, the PIP statute specifies payment of no more than 80% of a medical provider's reasonable medical bill. Fla. Stat. §627.736(1)(a). Where a provider's bill *is for less than* the Medicare or other applicable fee schedule, by definition it is *per se* a "reasonable medical expense" under Section 627.736(5)(a) (providers may only charge "a reasonable amount"). There is thus no need for any fact intensive investigation to determine the bill's reasonableness as, by definition, it is statutorily reasonable. *Progressive*, 2022 WL 2374660 at \*10, 12 and note 5. Nor is there any need to rely upon the fee schedules to calculate what 80% of the reasonable expense is because again, by statutory definition, a provider's bill for less than the fee schedule amount is a reasonable medical expense. Under such circumstances, if notice is given in the insurance policy by the insurer, as it was here by Allstate, (DE #26 at 3, ¶10), then all that needs to take place is for the insurer to pay 80% of the provider's actual medical bill. But under the district court's statutory rewrite, the 80% term is completely eliminated. See discussion in *Progressive*, 2022 WL 2374660 at \* 7, and note 7.

**2. The 100% Payment Mandate Rewrite:** Under the guise of statutory interpretation, the district court rewrote the PIP statute to mandate payment of 100% (or more) of a provider’s medical bills when those bills are less than the Medicare fee schedules amounts.<sup>9</sup> But nothing in the PIP statute mandates 100% payment of any providers’ medical bills. In fact, the statute provides just the opposite with its 80% payment directive. The district court’s own phrase, “permitting the insurer ‘to pay the lower billed amount in full,’” is an indictment of its ultimate holding, as “permitting” is not the same as *requiring* the insurer to pay the lower billed amount in full. *See also* discussion in *Progressive*, 2022 WL 2374660 at \* 6, 10-12.

**3. The Permissive vs. Mandatory Rewrite:** The district court’s interpretation impermissibly rewrites the PIP statute by transforming the final clause of Section 627.736(5)(a)(5) from a

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<sup>9</sup> The statutory language says that the “insurer *may* pay the amount of the charge submitted.” Fla. Stat. § 627.736(5)(a)5 (emphasis added). But under the district court’s misinterpretation, that statutory provision has been rewritten to state that “an insurer [*must* or *shall*] pay either 80% of the amount provided in the Schedule or the *full amount* of the lesser charge submitted by the provider.”

permissive term into a mandatory obligation. Section 627.736(5)(a)(5) states that an “insurer may pay the lower billed amount in full” if the medical bill is in an amount for less than 80% of the amount allowed under the Schedule. The word “may” is permissive,” not mandatory; the word “may” generally does not mean “shall” or “must.” *See, e.g., Harvard ex rel. J.H. v. Vill. of Palm Springs*, 98 So. 3d 645, 647 (Fla. 4th DCA 2012). But under the district court’s interpretation, the word “may” really means “must” or “shall,” so that whenever a medical provider’s bill is for less than the fee schedule amount, the insurance company is obligated to pay the full amount (100%) of the bill. Such a statutory interpretation is legal error, particularly where, as here, the interpretation conflicts both with the statutory text as well as the Florida Legislature’s goals. Nothing in the PIP statute’s language or legislative history supports the contention that the Legislature intended to create an exception to the 80% payment mandate of Section 627.736(1)(a), and instead require that insurers pay 100% of certain medical bills. Indeed, the 2nd DCA’s *Progressive* decision discussed and identified the legal error in the federal district court’s holding, when it stated: “Moreover, we lack the power to read into section 627.736(5)(a) a requirement that an insurer must pay

**any** charge at 100 percent of the face amount of the bill, just as we lack the power to read into that statutory provision a requirement that an insurer whose policy contains a fee schedule election notice must **always** pay a charge in an amount exceeding 80 percent of the applicable schedule of maximum charges in accordance with that schedule.” 2022 WL 2374660 at \*12 (emphasis in original).

**4. The Express Prohibition Rewrite:** Under the guise of statutory interpretation, the district court inserted a new term into the statute. Specifically, it rewrote the PIP statute *to prohibit* an insurance company (such as Allstate) from having a term in its insurance policy which provides that medical bills in an amount less than the amount allowed under the maximum fee schedules will be paid at only the 80% level. But the statute contains no such prohibition.

Statutes, of course, are to be enforced as written—not rewritten. As noted, *supra*, the word “may” is permissive,” not mandatory; the word “may” generally does not mean “shall” or “must.” *See, e.g., Harvard ex rel. J.H.*, 98 So. 3d at 647; *Progressive*, 2022 WL 2374660 at \* 11-12. Yet, despite the language in Allstate’s insurance policy, the federal district court rewrote the PIP statute to hold Allstate liable

for full (100%) payment of Revival’s medical bills by interpreting the statutory phrase “may pay” into “shall” or “must pay” the lower billed amount in full. Such a statutory rewriting is plain legal error, particularly where the lower court’s statutory rewrite conflicts with the Florida Legislature’s goals. Nothing in the statute’s language or legislative history supports the contention that the Legislature intended to create an exception to the 80% payment mandate of Section 627.736(1)(a), and instead require that insurers pay 100% of certain medical bills. Had the Florida Legislature intended such a radical change, a modification of PIP’s statutory scheme of that significance would be reflected somewhere in the legislative history and/or in the text of the statute itself. But it is not.

**B. The Federal District Court’s Justifications For Its Interpretative Rewriting Of The PIP Statute Confirm Its Misinterpretation Of The Statute.**

The district court offered several justifications for its interpretive rewriting of the PIP statute. None have merit.

**1. The “Hypothetical ‘Win-Win-Win’” Justification**

The District Court postulated the following hypothetical to justify its statutory interpretation:

“For instance, if a provider submits a bill for \$100 and the amount allowed under the Schedule for that services is \$150, the insurer could reimburse the provider \$120 (80 percent of the amount allowed under the Schedule) or \$100 (the Lesser Charge). As Revival correctly notes, this option ‘creates a win-win-win scenario. The insured has a reduced co-pay, the insurer limits its reimbursement, and the provider is paid in accordance with the statute.’”

(DE #47 at 9) The problem with this hypothetical is that it is divorced from the record and wrong about each identified “win.”

- “Win” #1 (*alleged “reduced co-pay”*): The insured does not have a “reduced” co-pay. Instead, requiring Allstate to pay 100% of the bill eliminates the insured’s co-pay entirely. Moreover, the additional 20% Allstate must pay the provider *reduces* the insured’s remaining insurance benefits by the same amount. Revival admittedly never collected the co-pay from the insureds, and hence the district court’s statutory interpretation effectively means a net loss to the insured in the form of reduced benefits. Finally, the Legislature made the judgment that it was in the insured’s best interest to require a copay in exchange for expanded benefits and a lower premium. A statutory interpretation eliminating the co-pay while at the same time reducing insurance coverage for insureds is a loss—not a “win”—for insureds.

- “Win” #2 (*alleged “insurer limits its reimbursement”*):

This is simply untrue; here, the insurer (Allstate) is paying 100% or more of each bill, not 80%. Those are the only two options under the PIP statute that the district court and Revival say Allstate has. (DE #47 at 11, n. 3) It is simply inaccurate to assert that Allstate has limited its reimbursement.

- *Win #3 (alleged “provider is paid in accordance with the statute”*): Again, simply incorrect. The provider (Revival) in this case is getting paid 100% (or more) of its medical bills. But that is contrary to the PIP statute’s 80% mandate, contrary to the Florida Legislature’s goal of limiting medical costs and PIP premiums, and detrimental to insureds, as it reduces their remaining insurance coverage.

The district court also justified its interpretative rewriting of the PIP statute by claiming that “Allstate’s argument would render § 627.736(5)(a)(5) unnecessary and meaningless because common sense dictates that no insurer would ever pay the full amount of a Lesser Charge as provided under §627.736(5)(a)(5), if it could, as Allstate argues pay only 80 percent of the Lesser Charge.” (DE # 47 at 10) But if the court were correct, then the Legislature would not

have made the statutory language permissive, and instead would have made it mandatory—*i.e.*, “shall” or “must pay.”

Moreover, the district court’s reasoning is speculative. There may be very good business reasons for an insurer to elect to pay the full amount of the charge in these circumstances. That is why the PIP statute gives insurers the permissive option (“may”) of doing so.<sup>10</sup> That the district court disagrees as a matter of its own policy perspective, or because it can discern no reason is irrelevant.<sup>11</sup>

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<sup>10</sup> This language also confirms that where an insurer has given notice that it will apply the fee schedule limitations, the insurer is not obligated to pay at the fee schedule, as fee schedule limitations are a “ceiling” not a “floor.” See *MRI Associates*, 334 So.3d at 585.

<sup>11</sup> The district court’s assertion that “no insurer would ever pay the full amount of a Lesser Charge as provided under § 627.736(5)(a)(5), that is nothing but speculation, as there may be any number of competitive pricing or business reasons for why an insurance company would choose to do just that. For example, if a particular medical provider was a lower cost provider, as compared to others, it would be economically rational for an insurance company to exercise its permissive option under Section 627.736(5)(a)(5) and pay 100% of medical bills from that provider (or similarly situated providers) when those bills are substantially less than the Medicare fee or other schedules. By doing so, the insurance company would be supporting competitive market forces that put downward price pressure on higher cost providers to lower their bills. Likewise, from an administrative burden standpoint, it may very well make economic sense for a particular insurance carrier to choose to pay particular bills in full when the bill is less than the fee schedule amount. Regardless, it is not the

By contrast, the Legislature had good reason to avoid a mandatory “full payment” provision. If it were mandatory, the 100% reimbursement effectively “waives” or eliminates the patient’s co-pay. Thus, although the provider’s bills appear to be lower, the providers are in fact jettisoning the 80%/20% design that is a central feature of the PIP statute. Indeed, under PIP policies the insurance coverage is finite, and hence a mandatory “no co-pay” rule harms even careful consumers.<sup>12</sup> But the district court’s ruling is a win-win for *providers*:

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province of the judiciary to second guess the policy and economic rationale of the Florida Legislature’s decision to make the provision permissive and not mandatory. *See Fla. Dept. of Revenue v. Fla. Mun. Power Agency*, 789 So. 2d 320, 324 (Fla. 2001) (“Under fundamental principles of separation of powers, courts cannot judicially alter the wording of statutes where the Legislature clearly has not done so”); *Richardson v. Richardson*, 766 So. 2d 1036, 1042 (Fla. 2000) (Same).

<sup>12</sup> In this regard, the Federal Government has explained:

“At first glance, it may appear that routine waiver of copayments and deductibles helps Medicare beneficiaries. ... In fact, this is not true. Studies have shown that if patients are required to pay even a small portion of their care, they will be better health care consumers, and select items or services because they are medically needed, rather than simply because they are free. Ultimately, if Medicare pays more for an item or service than it should, or if it pays for unnecessary items or services, there are less Medicare funds available to pay for truly needed services.”

they get full payment on their bills (or more) and, after the insurance benefits are exhausted (which will occur sooner under the district court's interpretation), they are not obligated to provide treatment unless the patient pays additional amounts.

Finally, regarding the distinction between “may” and “shall” (or “must”), the federal district court's own language cuts against its holding. Thus, the court said that while “the polestar of statutory construction is legislative intent,” the “determination of legislative intent begins and often ends, with the plain text of the legislation.” (DE #47 at 7) But in this case, although the court held that the plain text supported Revival's claims, in order to do so it had to interpret the PIP's statutory text to transform the word “may” into a mandatory payment obligation under Section 627.736(5)(a)(5). That transformation constitutes an impermissible rewriting of the PIP statute.

## **2. The “Permissive Equals Mandatory” Justification**

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Department Of Health And Human Services, Publication of Office of Inspector General Special Fraud Alerts (Federal Register Doc. 94-31157 Filed 12-16-94).

The district court’s explanation (DE #47 at 9-10) for how it interpreted the PIP statute so that the word “may” equates to a mandatory payment obligation confirms it improperly rewrote the statute. First, the court never explains how “may” can be read as imposing an affirmative mandatory obligation to pay 100%. It cannot. Indeed, this Court has held in a related context that the use of the fee-schedule methodology was permissive “based on the Legislature’s use of the word ‘may,’ which ‘indicates that this option choice is not mandatory.’” *Virtual Imaging*, 141 So. 3d at 156 (quoting *Kingsway Amigo Ins. Co. v. Ocean Health, Inc.*, 63 So. 3d 63, 67 (Fla. 4th DCA 2011)).

Second, rather than explain how it transformed the permissive word *may* into a mandatory obligation, the federal district court instead said “[t]here is nothing in the statutory language that allows an insurer to limit [a Lesser Charge] payment to 80 [percent],” (DE # 47 at 10) (quoting *Geico Indem. Co. v. Accident & Injury Clinic, Inc., a/a/b Frank Irizarry*, Case No. 2018-10031-APCC (Fla. 7th Jud. Cir. Cty. Ct. 2019), *quashed on other grounds*, 290 So. 3d 980, 984 (Fla. 5th DCA 2019).) That statement, we submit, is contrary to the express terms of the PIP statute and its 80% payment mandate, as

well as in conflict with the recent *Progressive* decision. 2022 WL 2374660.

Moreover, the *Geico* decision, *supra*, was premised on that court's construction of GEICO's insurance policy language, not the statutory language of Fla. Stat. § 627.736(5)(a)(5). Indeed, the *Geico* court concluded that the statutory language only created a permissive ("may") safe harbor to allow an insurer to "elect to pay the full billed amount, unless the language in the policy makes it mandatory to pay the lesser amount." *Real Healthcare, Inc. v. State Farm Mut. Auto. Ins. Co.*, Order Denying Summary Judgment, Case No. COCE 19026173, Cty. Ct., 17th Jud. Cir. (August 20, 2020)(Lee, J.) at 2 (DE #69 at2-3.) Had GEICO's insurance policy contained the language of Allstate's policy, it would have been in compliance with the statutory language to pay only 80% of the lesser amount because "the policy had no language requiring it to pay the full amount." See discussion in *Progressive*, 2022 WL 2374660 at note 4.

Finally, as to the assertion that "nothing in the statutory language" allows an insurer to limit the payment to 80 percent, respectfully, Allstate disagrees. That is the whole point of Sections 627.736(1)(a) and 627.736(5)(a)1.f.(1), which limit reimbursement to

80%.<sup>13</sup> And, as the *Progressive* decision recently pointed out: “It is perplexing that none of these [other] cases analyzes or even mentions whether an insurer’s payment of 80 percent of a provider’s billed amount does—or does not—comply with the statutory mandate that

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<sup>13</sup> Various Florida trial courts have agreed with Allstate’s reading of the PIP statute in this case and have found the statute permits payment at 80% for charges lower than the fee schedule: (i) *Real Healthcare, supra*—a decision that the federal district court here found to be “a non-binding decision that is directly on point with the instant case,” but which it also found “conflicts with [the] controlling authority” of the *GEICO Indemnity* case and “is an outlier among the many decisions rendered by the Florida Broward County Court that address this issue and interpret Geico,” (DE #77 at 9-11); (ii) *Gov’t Emps. Ins. Co. v. Sacowi Med. Clinic, LLC*, No. 2019-CV-000005-A-O (9th Jud. Cir., Orange Cty., Nov. 30, 2020) (reversing summary judgment for provider) (iii) *Royal Palm Chiropractic & Rehab Center P.A., (a/a/o Emily Hansen) v. GEICO Insurance Co.*, No. 2017 SC 009430 (Palm Beach Cty., May 8, 2019); (iv) *Spine & Extremity Rehabilitation Center Inc. (a/a/o Kristela Jean Baptiste) v. GEICO Indemnity Co.*, 26 Fla. L. Weekly Supp. 688a (St. Lucie Cty., Sept. 20, 2018) (finding insurer properly paid charge at 80%); (v) *Atlas Injury Center, Inc. (a/a/o Malcolm King Cole) v. Progressive Am. Ins. Co.*, 26 Fla. L. Weekly Supp. 409a (Miami-Dade Cty. Ct., July 20, 2018); (vi) *Columna, Inc. d/b/a Thomas Roush, M.D. (a/a/o Ashley Exantus) v. GEICO Indemnity Company*, No. 2016-SC-011754 (Palm Beach Cty. Ct., May 30, 2018); (vii) *Aventura Wellness and Rehab Center (a/a/o Beatriz Bruce) v. Progressive American Ins. Co.*, 26 Fla. L. Weekly Supp. 311b (Miami-Dade Cty. Ct., March 14, 2018); and (viii) *Physicians Group, LLC (a/a/o Jimetra West) v. GEICO Indemnity Co.*, No. 16-C-019155 (Hillsborough Cty. Ct., Feb. 6, 2017). (Copies included in the federal district court Appendix.)

a PIP insurer must provide coverage for 80 percent of reasonable medical expenses. After all, the ‘reasonable medical expenses coverage mandate’ is the ‘heart of the PIP statute’s coverage requirements.’ [Citations omitted] Which is to say that a determination of whether a particular payment is or is not reasonable should be a fundamental component in the resolution of **any** dispute over the amount of reimbursement a PIP insurer has paid to a medical provider.” 2022 WL 2374660 at \*6 (emphasis in original). And that determination of reasonableness is satisfied whenever the bill is less than the fee schedule limitations, as it is by definition a *per se* reasonable amount or charge given that the provider is obligated by statute to bill only reasonable amounts.

### **3. The “Florida Legislature Would Have Said So” Justification**

The district court also justified its transformation of the permissive word “may” into a mandatory 100% payment obligation by asserting that “[i]f the 80 percent limitation applied to Lesser Charges, the Florida legislature would have explicitly stated that. But it didn’t. Instead, the PIP statute explicitly states that, ‘...the

insurer may.” (DE #47 at 10 (emphasis in the original)) There are three problems with this justification.

First, the Florida legislature did say so by adopting the explicit statutory language (“may”), not mandatory language such as *must* or *shall*. The Legislature thus gave insurers a choice as to how they would proceed--100% or 80%. It did not mandate payment of 100% or more.

Second, the district court has it backwards. The overarching statutory mandate is 80% payment of reasonable medical bills. Section 627.736(1)(a). If a statutory exception was needed, it is an exception to depart from the obligation to pay 80%, and not more, which the Florida Legislature provided by giving insurers the option of relying on the permissive language in Section 627.736(5)(a)(1). Given the PIP statute’s overarching 80% mandate, and the option provided, it would be unnecessary as well as make no sense for the Florida Legislature to have “explicitly” said once again what the statute already provides—80% payment of reasonable medical expenses.

Third, the district court has now grafted a judicial exception onto Section 627.736(5)(a)(5) by creating an exception to the general

statutory payment mandate of 80%. But nothing in the statutory text suggests that an insurance company is ever obligated to pay 100% of a provider's medical bills; just the opposite. Had the Florida Legislature intended to make such a significant, unprecedented change to the PIP statute's long-standing 80% payment mandate by requiring an insurer to pay 100%, one would think that there would be some indication, somewhere, of such a substantial change to the 80% coverage mandate. Surely there would have been discussion in the staff analyses or other legislative history about the change, its purpose and expected impact upon insureds, providers or insurance companies. But Revival and the district court cannot point to a single sentence or clause in a single legislative history document suggesting the Florida Legislature had any intention to make such a fundamental change to the 80% payment mandate by adding the permissive word "may" to the statute (§627.736(5)(a)(1)). *See also* the discussion in *Progressive*, 2022 WL 2374660 at \* 11-12.

#### **4. The Federal District Court's "Permissive vs. Mandatory" Holding Confirms Its Legal Errors.**

The district court's Summary Judgment Opinion states that:

"Revival does not contend that § 627.736(5)(a)(1)(5) is mandatory. In fact, Revival explicitly acknowledges that

the provision is permissive. ... Revival simply argues that, when the Schedule is elected through proper notice and a provider submits a Lesser Charge, the PIP statute only provides the insurer with two options for payment. The insurer may pay 80 percent of amount allowed under the Schedule, or it if is [sic] less, the full amount of the charge submitted. ... For the reasons provided below, the Court agrees with Revival.”

(DE #47 at 7) This holding once again confirms the legal errors in the district court’s and Revival’s interpretation of the PIP statute.

First, the “option” that Revival suggests as an alternative to “full payment” has no statutory support. Revival says that, for charges ***less than 80% of the maximum fee schedules***, Allstate has the option of paying the maximum fee schedule amount, which will always be ***greater than the amount billed***. Not only does this transform the maximum amount allowed into a minimum required payment, but it leads to the absurd statutory construction of a PIP insurer having to pay more than reasonable medical expenses—an outcome that is irreconcilable with the PIP statute’s language and legislative history. For example, in this case because Revival’s charge of \$100 was less than 80% of the \$149 maximum fee schedule amount (*i.e.*, \$119.20), the district court held that Allstate had the option to (i) pay the full amount billed (\$100), but that Allstate also

had the option of (ii) paying \$119.20--the maximum allowed by the fee schedule—which is \$19.20 **more than the amount Revival billed**. Interpreting the PIP statute so that Allstate’s only options were to pay 100% of the billed amount, or 119.2% of the billed amount, makes no sense.<sup>14</sup>

Second, the district court’s interpretation once again erroneously rewrites the PIP statute by rendering Section 627.736(5)(a)(5) meaningless. Thus, if the outcome of this case depends upon whether Allstate, under the PIP statute, was limited to two exclusive binary payment methodologies, (i) the “fact dependent inquiry” or (ii) the fee schedules methodology, then Section 627.736(5)(a)(5) has no meaning. Indeed, one would never need to consider that Section at all when paying Revival’s medical bills. Such a statutory interpretation, however, is contrary to settled rules of

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<sup>14</sup> The federal district court’s focus on the permissive language of Section 627.736(5)(a)(5) as meaning that it “permits the insurer ‘to pay the lower billed amount in full’ (DE #47 at 9) misses the point. True, the statutory language permits the insurer to do that. But it does not require the insurer to do so. And here, Allstate in its insurance policy did not elect to pay the lower billed amounts in full, but instead, expressly provided in its PIP policies that it would pay 80% of the billed amounts.

statutory construction,<sup>15</sup> as well in conflict with the reasoning of *MRI Associates* and also the 2nd DCA's recent *Progressive* decision.

**C. The Federal District Court's Interpretative Rewrite Of The PIP Statute Conflicts With The Florida Legislature's Statutory Purpose And Injures Insureds.**

As discussed in Section I.B., *supra*, the Florida Legislature adopted and amended the PIP statute to achieve certain legislative goals, including its desire to control and reduce medical care costs, increase insurance benefits for insureds, and reduce premiums. Central to achieving these goals was the 80% payment mandate, Section 627.736(1)(a), which pressures medical care providers to price their services appropriately.

The district court's interpretation of the PIP statute deviates from the statute's plain text. But it also conflicts with the Legislature's policy goals. Under the district court's holding, the PIP

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<sup>15</sup> See, e.g., *Giamberini v. Dep't of Fin. Servs.*, 162 So. 3d 1133, 1136 (Fla. 4th DCA 2015) (“[A] statutory provision should not be construed in such a way that it renders the statute meaningless or leads to absurd results”); *Sch. Bd. of Palm Beach Cty. v. Survivors Charter Sch., Inc.*, 3 So. 3d 1220, 1234 (Fla. 2009) (The court must “give full effect to all statutory provisions and construe related statutory either [its] common sense or principles of logic in statutory interpretation”).

statute has now been interpreted as requiring an insurance company to pay *100% or more* of a medical provider's bills. That unprecedented 100% dictate cannot be reconciled with the legislative reasons for why the PIP fee limitations were enacted. Thus, in this case, Allstate was held to have violated the PIP statute by not paying 100% (or more) of Revival Chiropractic's medical bills notwithstanding Allstate's policy language to the contrary, and in conflict with the PIP statute's 80% payment mandate. Even worse, the district court went so far as to hold that Allstate's only options were to pay 100% or pay nearly 20% *more than* the amount Revival billed. (\$119.20 payment on a \$100 bill; *see* discussion at 53-54, *supra*.)

Nothing in the text of Section 627.736, nothing in its legislative history, and nothing in the prior decisions of this Court suggests that the Florida Legislature adopted Section 627.736(5)(a)(1) for the purpose of benefitting medical providers by paying 100% or more of their bills. Yet, that is precisely how the district court interpreted and rewrote the PIP statute in this case.

Finally, the federal district court's interpretation of the PIP statute injures PIP insureds. PIP benefits will be depleted more quickly, and, as Florida's Legislature has observed, increased costs

for medical services covered by insurance ultimately result in higher premiums. Thus, what is at stake here is not simply Revival's bills or Allstate's PIP policies, but a statutory interpretation that adversely affects all PIP insureds in the state of Florida.

**D. The Federal District Court's Statutory Interpretation Conflicts With This Court's *MRI Associates* Decision, As Well As The 2nd DCA's Recent July 1, 2022 Decision in *Progressive*.**

When the federal district court issued its Summary Judgment decision in our case, it did not have the benefit of this Court's decision in *MRI Associates*, much less the 2nd DCA's recent decision in *Progressive*. But, had it the opportunity to consider those two opinions, we submit that the district court could not have interpreted the PIP statute as it did.

Indeed, as the 11th Circuit Court of Appeals explained in certifying the question of statutory interpretation to this Court, 2022 WL 1799759, the *MRI Associates* decision "undermined" the reasoning of appellate decisions that have interpreted the PIP statute differently and contrary to what Allstate contends is the proper interpretation here, decisions such as *Hands On Chiropractic PL a/a/o Justin Wick v. GEICO Gen. Ins. Co.*, 327 So.3d 439 (Fla. 5th

DCA 2021), and *Geico Indem. Co. v. Muransky Chiropractic P.A.*, 323 So. 3d 742 (Fla. 4th DCA 2021), among others.

The fundamental problem with the various Florida appellate and lower court decisions which have held that under the PIP statute an insurance company's election of the fee schedules precludes it from paying anything but 100% (or more) of a medical provider's billed amount when that bill is less than the fee schedules, is that those decisions simply fail to consider the overarching 80% payment mandate of Section 627.736(1)(a). Instead, those decisions erroneously treat the payment options available to insurance companies as binary, either pay under (i) the fact intensive methodology, or (ii) the fee schedules, and nothing else. And therein lies the problem, as well as the significance of the *MRI Associates* decision. For in *MRI Associates*, this Court rejected the foundational predicate of *Hands On*, *Muransky* and all other decisions that have interpreted the PIP statute adversely to Allstate's position here on appeal. As the *Progressive* court noted: "It is perplexing that none of these [other] cases analyzes or even mentions whether an insurer's payment of 80 percent of a provider's billed amount does—or does not—comply with the statutory mandate that a PIP insurer must

provide coverage for 80 percent of reasonable medical expenses.”  
2022 WL 2374660 at \*6.<sup>16</sup>

Finally, *MRI Associates*’ reasoning and holding cannot be reconciled with the federal district court’s interpretation of the PIP statute. First, *MRI Associates* rejected the district court’s and Plaintiff Revival’s foundational argument that there are only two options for paying medical bills, (i) the fact dependent methodology, or (ii) the fee schedule methodology. 334 So. 3d at 582-585.

Second, *MRI Associates* holds that the 80% payment provision is the mandate, and that the PIP statute does not require more than an 80% payment of reasonable medical bills. The PIP statute sets a “ceiling but not a floor.” 334 So.3d at 585.

Third, *MRI Associates* rejected the argument that there cannot be a “hybrid” or alternative payment methodology for paying medical bills at the 80% level or rate. Thus, in addition to rejecting the

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<sup>16</sup> *Wick*, *Muransky* and other decisions adverse to Allstate’s appeal and interpretation of the PIP statute are all infected with additional legal errors, including among others that: (i) None explain where in the PIP statute the Legislature *mandated* payment of 100% (or more) of a provider’s medical bills; and (ii) None consider the myriad ways in which their interpretation of the PIP statute rewrites it, to the detriment of insureds.

argument that there are only two payment options, *MRI Associates* recognized that a “hybrid” or alternate payment methodology is permitted by the PIP statute so long as the insurance contracts at issue give notice, which is what Allstate’s PIP insurance policies do here. 334 So. 3d at 583-584.<sup>17</sup>

The reasoning and holding of *MRI Associates*, in short, cannot be reconciled with the interpretation of the PIP statute adopted by the federal district court, and upon which Revival’s claims are predicated.<sup>18</sup>

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<sup>17</sup> One point to note: Allstate’s PIP policies are unique because they expressly provide that in the event a medical provider’s bill is less than the fee schedule amount, Allstate will pay 80% of the billed amount, unlike the other insurance companies’ policies at issue and discussed in various appellate court opinions addressing this statutory interpretation question.. (DE # 26 at 3, ¶10)

<sup>18</sup> Since the *MRI Associates* decision, the lower courts have continued to be in disarray, as the 11th Circuit Court of Appeals noted in its *per curiam* opinion. 2022 WL 1799759 at \*4. Post-*MRI Associates* decisions either following its reasoning and/or agreeing with Allstate’s interpretation of the PIP statute include: (i) *River City Medical v. State Farm* (Duval County, Jan. 5, 2022); (ii) *Ocean Chiro. and Health Ctr., Inc. v. State Farm Mut. Auto. Ins. Co.*, Case No. COWE20005813, County Court, Broward County, Florida (Dec. 29, 2021); *AssociatesMD Medical Group LLC v. Security Nat. Ins. Co.*, Case No. COWE21002311, County Court, Broward County, Florida (February 25, 2022); and (iv) *Miami Medical Group*,

**E. Finally, The Federal District Court’s Statutory Interpretation Rewrote Or Voided Allstate’s PIP Insurance Policies.**

Allstate’s insurance policies expressly provide that it will pay providers like Revival 80% of their medical bills if those bills are less than the applicable fee schedules. See Stipulated Facts, DE #26 at 3, ¶10.

Although the district court said that Allstate’s PIP insurance “policy itself is not at the heart of this case” (*id.* at 7), that court’s misinterpretation of the PIP statute effectively voids and/or rewrites the Allstate policies to eliminate the policy language providing that Allstate “will pay eighty percent of the charge that was submitted” whenever the “provider submits a charge for an amount less than the amount determined by the fee schedule or other limitations established by Section 627.873 of the” PIP statute. (*Id.* at 3, ¶10) See *King v. Allstate Ins. Co.*, 906 F.2d 1537, 1540 (11th Cir. 1990) (Explaining that an insurance policy is the law between the parties

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*Inc. v. Auto Club Insurance Company of Florida*, No. 2020-006731-SP-26 (County Court, Miami-Dade County, Florida (May 19, 2022)).

and must be enforced as written, unless its provisions are contrary to public policy or statutory law).

In short, Allstate gave notice to insureds and providers alike as to what bills it would pay, and what bills it would not pay or only would pay at the 80% rate. Nevertheless, the federal district court voided and/or rewrote the express terms of those written insurance policies under the guise of interpreting the PIP statute.

### **CONCLUSION**

The interpretation of the PIP statute by Revival and the district court is legally erroneous. The court entered summary judgment against Allstate (i) by rewriting the PIP statute in multiple respects, including to mandate payment of 100% of medical provider Revival's bills—contrary to Section 627.736(1)(a); (ii) by rewriting Allstate's PIP insurance policies to require full payment with the option of paying substantially more than the provider's billed amount; and (iii) did so contrary to the PIP statute's plain language, legislative purpose, the reasoning of *MRI Associates*, and to the detriment of insureds. Accordingly, as to the question certified to this Court by the 11th Circuit Court of Appeals, Allstate respectfully submits that the only proper answer is “yes,” and that this Court should issue an Opinion

directed to the Federal Court of Appeals stating that whenever a personal injury protection insurance policy provides notice that it will limit payment pursuant to the statutory schedule of maximum charges, an insurer may pay 80% of the charge submitted, even when the charge submitted is less than 80% of the statutory schedule of maximum charges.

Dated: August 10, 2022

Respectfully submitted,

By:           /s/ Peter J. Valeta            
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**CERTIFICATE OF SERVICE**

I **HEREBY CERTIFY** that a true and correct copy of the foregoing was served via the Court's e-Filing Portal and in accordance with the Florida Rules of Civil Procedure on this 10th day of August, 2022 on all Counsel of Record identified on the attached Service List.

DATED: August 10, 2022

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**CERTIFICATE OF COMPLIANCE**

Pursuant to Rule 9.210(a), Fla. R. App. P., undersigned counsel hereby certifies that this brief is submitted in Bookman Old Style 14-point font. We certify the brief contains 12,943 words excluding the Table of Authorities and Table of Contents and otherwise complies with the Rules pertaining initial briefs.

DATED: August 10, 2022

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