

IN THE SUPREME COURT OF THE STATE OF FLORIDA

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

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

Appellant(s)

Appellee(s)

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TABLE OF CONTENTS

	<u>Page</u>
TABLE OF AUTHORITIES.....	III
INTRODUCTION.....	1
I. THE PIP STATUTE’S LEGISLATIVE PURPOSE WAS TO BENEFIT INSUREDS (AB 19-30).....	5
II. ALLSTATE’S INSURANCE POLICIES IMPLEMENTED THE STATUTORY MANDATE TO PAY 80% (AB 31-34).....	6
III. THE DISTRICT COURT ERRED AS A MATTER OF LAW BY REWRITING THE PIP STATUTE (AB 34-57).....	9
IV. THE DISTRICT COURT’S INTERPRETATIVE REWRITE OF THE PIP STATUTE INJURES INSUREDS (AB 41-46, 55-57).....	10
V. REVIVAL’S RELIANCE ON THREE FLORIDA APPELLATE DECISIONS DOES NOT HELP IT (AB 47, 57-58).....	14
VI. THE SECOND DCA’S <i>PROGRESSIVE</i> DECISION CONFIRMS THE DISTRICT COURT’S LEGAL ERRORS (AB 18-19, 37-40, 49-50, 52, 58-59)	17
VII. <i>MRI ASSOCIATES</i> CONFIRMS THE DISTRICT COURT’S LEGAL ERRORS (AB 59-60).....	18
CONCLUSION.....	20
CERTIFICATE OF COMPLIANCE	24

TABLE OF AUTHORITIES

Page(s)

Cases

<i>MRI Assoc. of Tampa, Inc. v. State Farm Mut. Auto. Ins. Co.</i> , 334 So. 3d 577 (Fla. 2021)	1, 3, 18
<i>Geico Indem. Co. v. Accident & Injury Clinic, Inc. a/a/o Frank Irizarry</i> , 290 So. 3d 980 (Fla. 5th DCA 2019)	14
<i>Geico Indem. Co. v. Muransky Chiropractic P.C.</i> , 323 So. 3d 2d 742 (4th DCA 2021)	14, 15
<i>Hands on Chiropractic PL a/a/o John Wick v. Geico Gen. Ins. Co.</i> , 327 So. 3d 439 (Fla. 5th DCA 2021)	15, 16
<i>Progressive Am. Ins. Co. v. Back On Track, LLC</i> , 324 So. 3d 779 (Fla. 2d DCA 2022)	15, 17

Statutes

Fla. Stat. § 627.736(5)(a)	1, 2, 4
Fla. Stat. § 627.736(5)(a)(5)	<i>passim</i>
Fla. Stat. § 627.736(5)(a)1.a. - f.	2
Fla. Stat. § 627.736(1)(a).	<i>passim</i>

INTRODUCTION

This Court already has determined the central issue in this appeal in *MRI Assoc. of Tampa, Inc. v. State Farm Mut. Auto. Ins. Co.*, 334 So. 3d 577 (Fla. 2021) (“*MRI Associates*”). Specifically, the full context of the PIP Statute’s authorization of reimbursement limitations

“requires that reimbursement limitations based on the schedule of maximum charges be understood ... simply as an optional method of capping reimbursements rather than an exclusive method for determining reimbursement rates. By its very nature, a limitation based on a schedule of maximum charges establishes a ceiling but not a floor.”

334 So. 3d at 584-85. Allstate’s policies adopted those limitations but also stated that provider bills at lesser amounts will be paid at 80% of the billed amount.

Notwithstanding *MRI Associates*, however, Revival’s defense of its interpretation of § 627.736(5)(a) is based on two foundational predicates, which the federal district court adopted, but which constitute plain legal error.

First, Revival’s Answer Brief (“RAB”) repeatedly asserts that Allstate’s PIP insurance policies adopted the fee schedules as the “exclusive” method by which Allstate agreed to pay provider medical

bills.¹ Not true; Allstate’s PIP policies do not declare fee schedule amounts as an “exclusive” reimbursement method, as they also state that for charges less than fee schedule amounts, Allstate “will pay eighty percent of the charge that was submitted.” (DE # 26-1 at 67-68; DE #26-2 at 63-64)²

Revival’s *second* foundational predicate is that insurers (like Allstate) have “only two reimbursement options...to satisfy the [statute’s] reasonableness mandate: (1) the default method, which is the longstanding ‘fact-specific analysis of whether a health care provider’s charges are reasonable’ as set forth in § 627.736(5)(a)., or alternatively, (2) the permissive method, which includes the schedule of maximum charges set forth in” § 627.736(5)(a)1.a. - f., which is “commonly referred to as the ‘Schedule.’” (RAB 5-6; *see also* RAB 4-5, 8, 29) Based upon this premise, Revival argued and the district court held that because Allstate had given “notice of its intent to limit reimbursements pursuant to the Schedule,... it must reimburse

¹ *See, e.g.*, RAB 1, 3, 4-5, 8, 13-14, 17, 19, 25-26, *passim*.

² The district court and Revival insert the word “exclusive” when referencing Allstate’s fee schedule election even though it does not appear in Allstate’s policies.

charges submitted pursuant to the specific and applicable [fee] schedule” set forth in the PIP statute; it had no other payment options. (*Id.* 6)

The flaw in the district court’s ruling and Revival’s argument is that the “two payment methodology” premise is simply wrong. “The permissive nature of the statutory notice language does not in any way signal that the insurer will be so constrained by such an election.” 334 So. 3d at 584.

Moreover, the PIP statute’s *overarching mandate is to pay 80% of reasonable medical expenses—period.* Revival admits this, calling it the PIP statute’s “*reasonableness mandate.*” (RAB 29) What this means is that under the PIP statute, Fla. Stat. §627.736(1)(a), insurance companies pay 80% of “reasonable” medical bills, not 100%. (Allstate’s Initial Brief (“AB”) 2-4, 7, 10, 12-13, 17, 23-25, *passim*) It is undisputed that *Allstate gave notice to insureds and providers in its PIP insurance policies of precisely how it would pay provider medical bills:* “[t]he methodology for determining the amount [Allstate] will pay for such expenses shall ... 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

contained in the law)” (DE #26 at 2-3; AB 8)--*i.e.*, a “ceiling”, not a guaranteed minimum (*i.e.*, a “floor”). Allstate’s PIP policies went further, stating that bills less than the reimbursement limitations will be paid at 80% of the billed amount in compliance with the statute’s “reasonableness mandate.” Fla. Stat. §627.736(1)(a).

It is thus wrong to argue that Allstate “*unlawfully create[ed] a payment methodology (80% of charges that are less than the Schedule) not provided for in*” the PIP statute. (RAB 38) Instead, its policy language implements PIP’s overarching statutory “mandate” that reasonable medical bills shall be reimbursed at 80%—period.³

In sum, the foundational predicates for Revival’s statutory interpretation, which the federal court adopted, are wrong as a matter of law because they rewrite Allstate’s PIP policies as well as the PIP statute to eliminate the statutory “mandate” of paying 80% of reasonable medical expenses.⁴

³ § 627.736(5)(a) states that providers may only charge “a reasonable amount.” By definition, Revival’s billed amounts less than the fee schedule are a “reasonable amount.”

⁴ Revival argues the PIP statute’s overarching 80% “reasonableness mandate” does not apply because it was not specifically incorporated into § 627.736(5)(a)(5), referencing examples such as workers compensation or insured’s wage loss claims. (RAB 31-32)

To put it most simply: Where does the PIP statute *require* Allstate or any other insurer to pay 100% of a provider’s medical bills? It does not. Yet, that is the baseline legal error made by the district court at Revival’s request when it improperly rewrote the statute to impose a 100% mandatory payment obligation upon insurers.

I. THE PIP STATUTE’S LEGISLATIVE PURPOSE WAS TO BENEFIT INSUREDS (AB 19-30)

Revival argues that “legislative intent is entirely irrelevant,” (RAB 20-21), but never denies that the Florida Legislature adopted the PIP statute to benefit insureds—not medical providers. (AB 20-23)⁵ Nor does Revival dispute that the PIP statute achieves its

But Allstate is referring to the “reasonableness mandate” requiring payment of 80% of reasonable *medical expenses* under the statute, and nothing more. Moreover, it makes no sense to hold that PIP’s overarching “reasonableness mandate” does not apply unless specifically included in § 627.736(5)(a)5., as that would render meaningless the permissive statutory language authorizing an insurer to pay medical bills in full when less than the fee schedule amounts.

⁵ Revival says it is “patently frivolous” for Allstate to ask this Court to consider legislative intent. (RAB 20) Yet, Revival itself references its view of the legislative history, (RAB 34-35), although in doing so Revival never once addresses the jugular issue, specifically: ***Where in the PIP statute or its legislative history***

legislative purpose of benefitting insureds through adoption of the overarching statutory mandate of paying 80% of reasonable medical bills. Fla. Stat. §627.736(1)(a).

This 80% payment provision is fundamental to the PIP statute (AB 23-25), and is the fulcrum point of Allstate’s appeal because nothing in the PIP statute or its legislative history suggests that the statutory 80% reimbursement limitation was ever changed to *require* insurers to pay not 80%, but 100% of reasonable medical expenses. (*Id.*) Yet, that is precisely how both Revival and the district court have erroneously interpreted (rewritten) the PIP statute here.

II. ALLSTATE’S INSURANCE POLICIES IMPLEMENTED THE STATUTORY MANDATE TO PAY 80% (AB 31-34)

Revival does not dispute that the district court’s holding rewrites Allstate’s PIP policies by requiring 100% payment of its medical bills. (RAB 57) But it justifies this outcome by reasserting its erroneous foundational predicate that “the PIP statute...provides only two reimbursement options for insurers...” (RAB 5; *see*

does the Florida Legislature mandate that an insurer pay 100% of a provider’s medical bills?

Allstate's discussions of this binary payment problem in the Introduction, *supra*.)

Revival also argues second, that Allstate's election of the fee schedules precludes payment on any other basis, and that the district court found Allstate's argument one that "contradicts the parties' stipulation" that Allstate "had elected to apply fee schedule limitations." (RAB 15; DE #77 at 7.) But both the district court and Revival ignore the key part of the stipulation (Paragraph 10) which indisputably shows that Allstate did not simply elect the fee schedules, but instead, adopted a hybrid approach that elected the fee schedule subject to the 80% reasonableness mandate for bills less than the fee schedule amounts. (AB 60)

Revival next argues Allstate's PIP policies violate the PIP statute. (RAB 37-40, 42) Again, its argument rewrites the PIP statute to *require* not 80% but 100% payment of provider bills.

Fourth, Revival argues that Allstate's policy provisions "*do not track* regarding the reimbursement of charges submitted that are less than the Schedule and that are less than 80% of the Schedule." (RAB 40 (emphasis in original).) But again, Revival misses the point. Allstate's policy provisions do track the overarching 80%

reimbursement limitation. Fla. Stat. §627.736(1)(a). Revival, in contrast, improperly rewrites the PIP statute to transform the phrase “the insurer may pay the amount of the charge submitted” (RAB 17), into “the insurer must or shall pay the amount of the charge submitted.” But the word “may” does not mean “must” or “shall.”⁶

Finally, Revival argues Allstate’s policy “is not in favor of the insured” because it allegedly provides “less coverage than the minimums required by Florida law....” (RAB 2, 42) But Revival never explains how Allstate’s policy provides “less coverage,” nor can it. It is Revival’s statutory interpretation that results in less insurance coverage, as payment of medical bills at 100% results in insureds’ medical coverage being depleted more quickly.⁷

⁶ Ironically, Revival argues it is Allstate who seeks to rewrite the PIP statute (RAB 29, 40, 43), but its argument: (i) expressly assumes that the 80% reasonableness mandate does not apply to Section 627.736(5)(a)5; (ii) ignores the PIP statute’s actual language and instead imposes a mandatory 100% payment obligation; and (iii) assumes that an insurance company has only two binary payment options and cannot adopt a hybrid payment methodology, an assumption rejected in *MRI Associates*.

⁷ Revival’s “less coverage” argument is based in part on its assertion that insureds will have to make a 20% copay. That assertion, however, is contrary to the stipulated record facts. (DE #26, ¶17.)

Revival also argues that Allstate’s statutory interpretation creates an “ambiguity” its policies. (RAB 41) Not true, as the policies’

III. THE DISTRICT COURT ERRED AS A MATTER OF LAW BY REWRITING THE PIP STATUTE (AB 34-57)

The district court, and Revival here, rewrite the PIP statute. First, they do so by eliminating the 80% payment provision. (AB 34-37.) Second, they add a mandate to pay 100% of provider bills when those bills are less than the fee schedules. (*Id.* 38.) Third, they redefine the permissive word “may” as a mandatory “must” or “shall” obligation. (*Id.* at 38-40, 47-50.) Last, they rewrite the statute to prohibit PIP insurance policy language providing that billed amounts less than the fee schedules will be paid at the 80% level. (*Id.* 40-41)

Revival offers no specific substantive response to the myriad ways it seeks to rewrite the statute. Instead, it relies on certain Florida appellate court decisions to justify its statutory misinterpretation (discussed at AB 47, 57-58, and in Section V, *infra*). None of those decisions addressed much less justified the ways in which Revival and the district court rewrite the PIP statute.

plain language could not be clearer—*i.e.*, charges less than the Fee Schedule amounts will be paid at 80% in compliance with the reasonableness mandate. Regardless, ambiguities are never construed in favor of the medical provider, but in favor of the insureds. (*Id.*)

Revival also argues that there is no 80% “reasonableness mandate” at all when provider charges are less than the fee schedule amounts. (RAB 33) According to Revival, the 80% reimbursement mandate makes no sense as it would mean that insurers would only be required to pay 80% of the fee schedule amounts. This argument is meritless, as what is at issue is not a charge calculated under the fee schedule, which statutorily complies with the 80% mandate, but instead, a charge for which Revival seeks 100% payment because it is less than the fee schedule amount.

IV. THE DISTRICT COURT’S INTERPRETATIVE REWRITE OF THE PIP STATUTE INJURES INSUREDS (AB 41-46, 55-57)

Allstate’s Initial Brief explained how requiring Allstate and other insurance carriers to pay 100% of medical provider bills injures insureds, and benefits providers. Revival disagrees (RA at 21-34), arguing *first*, that it is Allstate’s statutory interpretation that “benefits insurers by allowing them to pay less PIP benefits than it is statutorily and contractually required to....” (RAB 21) Of course, Revival is wrong about what Allstate’s PIP contracts provide, as discussed above. Moreover, Revival’s argument erroneously assumes the PIP statute mandates payment of 100% of a providers’ bills.

Revival argues *second*, that its statutory interpretation “benefits all involved.” (RAB 22) Not true, but also irrelevant. Not true because insureds get less insurance coverage as their benefits are exhausted sooner by virtue of a 100% payment obligation. But also irrelevant, because the PIP statute was designed to benefit insureds—not providers. (AB 19-30)

Third, Revival argues insureds benefit by having “no co-payment” under its interpretation. (RAB 22-24) But the insureds in this case never paid the 20% co-pay. (DE #26, ¶17.) Regardless, Revival’s argument overlooks the problem that in exchange for no co-payments insureds end up with less insurance coverage overall.

Fourth, Revival’s arguments about “a ‘Win-Win-Win’ scenario” are based upon the mistaken assumptions that, whenever a medical bill is less than the fee schedule amount, payment at 100% is (i) a benefit to the provider, as it gets paid in full; (ii) is a benefit to the insureds, because there is no co-pay; and (iii) is a benefit to the insurer, because the insurer paid less than the fee schedule amount. (RAB 22-25) Of course, Allstate did not contractually agree to pay the fee schedule when bills were submitted at less than fee schedule; it agreed to pay 80% of such bills. Moreover, the insured now has

less remaining coverage, because the providers' bill was paid at 100%, not 80%.⁸

Fifth, Revival argues that “only Allstate benefits” under its statutory interpretation and that “*the insured never benefits.*” (RAB 25 (emphasis in original)) Not so; Allstate’s payment obligation is and remains the policy limits. The only question is how fast those limits are exhausted. Under Revival’s interpretation they are depleted faster to the detriment of insureds.⁹

Knowing that its rewriting of the PIP statute harms insureds, Revival attempts to obscure this problem by arguing that insureds

⁸ Revival’s Answer Brief has charts (RAB 23-25) purportedly showing insureds benefit in “[i]n all scenarios.” (RAB 25) Allstate addressed these arguments in its Initial Brief. (AB 41-46) But Revival’s charts have two additional problems. One: They are contrary to the stipulated record facts, which are the insureds paid no co-pay. Two: They ignore the fact that by requiring 100% payment of medical bills insureds end up with less coverage, because that 20% additional amount paid reduces the insured’s remaining benefits.

⁹ Revival suggests that its interpretation makes sense because “a medical provider *never* receives more than its billed amount.” (RAB 26 (emphasis in original)) But that is the problem, not the answer. Under PIP’s “reasonableness mandate,” the provider is to receive 80%—not 100%. Fla. Stat. Fla. Stat. §627.736(1)(a).

are better off when Allstate pays charges below the fee schedule at 100%, as such charges are less than the schedule amounts. (RAB 30-31) But that is an improper apples-to-oranges comparison, as (i) nothing in the PIP statute requires Allstate to pay 100% of medical provider charges, and (ii) Revival's argument simply confirms that the insured will suffer a depletion of coverage.¹⁰

Sixth, Revival argues that if Allstate could pay less than the fee schedule, that would be "less than it contracted to pay and less than what the PIP statute requires it to pay...which ultimately would discourage medical providers from charging less than the Schedules...." (RAB 27) Again, incorrect. Allstate's contract expressly provided it would pay 80% of the charges if they were less than the fee schedule amount. Moreover, the PIP statute nowhere *requires* an insurer to pay 100% of providers' bills. And, as to the

¹⁰ Revival also asserts the Florida Legislature enacted §627.736(5)(a)5 to preclude a "possible inequity" if a medical provider submitted charges that were less than 80%. (RAB 26) This argument is one devoid of merit, as no legislative history supports it. Moreover, there is nothing inequitable about requiring Revival to comply with the overarching statutory "reasonableness mandate" of receiving 80% of its medical bills, and not 100%. Fla. Stat. §627.736(1)(a).

assertion that Allstate’s interpretation would “discourage medical providers from charging less than the Schedules,” that *in terrorem* speculation is contrary to the record, as Revival and other medical providers already charge less than the Fee Schedules. Besides, provider charges should be what is reasonable for the treatment rendered and not based on what they can recover from the insurer.

Last, Revival argues that “Allstate’s interpretation of the PIP statute would effectively negate its notice to limit reimbursements pursuant to the Schedule and render the notice requirement set forth in §627.736(5)(a)5., Fla. Stat. meaningless.” (RAB 27) Simply untrue, because Allstate’s policy language implements the PIP statute, including its overarching 80% payment of reasonable medical expense mandate. Moreover, Allstate’s notice included specific language stating that Allstate would pay 80% of provider’s bills where the bills submitted are less than the fee schedule charges.

V. REVIVAL’S RELIANCE ON THREE FLORIDA APPELLATE DECISIONS DOES NOT HELP IT (AB 47, 57-58)

Revival relies on three Florida appellate court decisions: (i) *Geico Indem. Co. v. Accident & Injury Clinic, Inc. a/a/o Frank Irizarry*, 290 So. 3d 980 (Fla. 5th DCA 2019); (ii) *Geico Indem. Co. v. Muransky*

Chiropractic P.C., 323 So. 3d 2d 742 (4th DCA 2021); and (iii) *Hands on Chiropractic PL a/a/o John Wick v. Geico Gen. Ins. Co.*, 327 So. 3d 439 (Fla. 5th DCA 2021). However, those decisions predate *MRI Associates*; the only DCA opinion after *MRI Associates* (*Progressive v. Back On Track*, discussed *infra*) supports Allstate's position.

The three decisions Revival cites involved GEICO's PIP policy. But, unlike Allstate's PIP policy, GEICO's policy did not provide for payment of 80% of bills submitted when the bills were less than the fee schedules. Instead, GEICO elected the fee schedule *and also promised* "it will pay the billed amount where it is less than the 'amount allowed.'" 327 So. 3d at 442. Nevertheless, GEICO attempted to justify paying only 80% of the billed amounts by arguing it could do so on the basis of applying its 20% co-pay charge. *Id.* at 443. That argument, of course, has nothing to do with this appeal. None of these three decisions considered, or decided, the specific statutory (and policy language) issues that Allstate's appeal raises.

The *Wick* Court could have narrowly decided that GEICO had breached its policy's payment obligations. Instead, *Wick* spoke in broad terms, holding that "[t]here is nothing in the statutory scheme that permits a PIP insurer to limit reimbursements to 80 percent of

the billed amount.” *Id.* at 440. The language of Allstate’s PIP policy and its appellate arguments are different and, Allstate submits, were never considered by *Wick*.

First, unlike the GEICO policy, Allstate’s PIP policy expressly states that provider bills will be paid at 80% where the billed amount is less than the fee schedules.

Second, *Wick* did not address Allstate’s argument that the overarching 80% reimbursement limitation in Fla. Stat. §627.736(1)(a) governs. Nor did *Wick* consider the fact that the PIP statute nowhere mandates 100% payment of provider medical bills.

Third, although *Wick* says that “nothing in the statutory scheme...permits a PIP insurer to limit reimbursements to 80 percent of the billed amount,” the court never discusses Fla. Stat. §627.736(1)(a)—which Allstate contends does precisely that.

Last, *Wick* does not consider the several ways in which the district court’s statutory interpretation rewrites the PIP statute.

As to *Muransky*, the basic fact pattern considered, arguments made, and decision of that court are indistinguishable from *Wick* and, Allstate submits, suffers from the same flaws.

Regarding *Irizarry*, the *Wick* court clarified *Irizarry* but still did not address the statutory and policy language issues presented here. (AB 47-48)

VI. THE SECOND DCA’S PROGRESSIVE DECISION CONFIRMS THE DISTRICT COURT’S LEGAL ERRORS (AB 18-19, 37-40, 49-50, 52, 58-59)

Revival argues the Second District’s opinion in *Progressive Am. Ins. Co. v. Back On Track, LLC*, 324 So. 3d 779 (Fla. 2d DCA 2022), “was wrongly decided.” (RAB 53) Revival’s reasoning, however, proves the opposite. Thus, first, Revival repeats its binary payment methodology argument, which this Court rejected in *MRI Associates*. (RAB 53) Second, Revival again makes its argument that Allstate chose the fee schedule payment methodology as the “*exclusive method* of calculating reimbursement....” (*Id.* at 54 (emphasis in original)) But, as discussed, that is untrue.

Third, Revival argues that if the 2d DCA’s interpretation of the PIP statute is correct, then “there would have been absolutely no reason for the Legislature to include the insurer with the option in § 627.736(5)(a)(5).” (RAB 54) Revival’s argument makes no sense. For one thing, that Section gives insurers the permissive “may” option of paying provider bills in the full amount so long as they are less than

the fee schedule. For another, to agree with Revival one has to rewrite the permissive word “may” in the statute and replace it with the mandatory words “must” or “shall.”

VII. MRI ASSOCIATES CONFIRMS THE DISTRICT COURT’S LEGAL ERRORS (AB 59-60)

Despite arguing that *MRI Associates* “does not affect the instant action” (RAB 51), Revival’s arguments confirm the irreconcilable conflict between *MRI Associates* and Revival’s appellate arguments.

First, *MRI Associates* rejected the foundational predicate that the PIP statute only has two binary payment options. 334 So. 3d at 582-585. (AB 59)

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. (AB 59) That is a jugular issue, and is the reason why the PIP statute sets a “ceiling but not a floor.” 334 So. 3d at 585. Rather than address this problem with its appellate position, Revival argues *MRI Associates* did not “address what is required of an insurer once it elect [sic] and choses [sic] to rely on the Schedule to calculate reimbursements.” (RAB 45) But again, that argument is untrue, as Allstate’s policy did not simply

elect the fee schedules, but also provided that it would pay 80% of bills submitted that are less than the fee schedules.¹¹

Last, Revival argues that the “distinction between the language in State Farm’s insurance policy...and the language in Allstate’s insurance policy” is important. (RAB 47) Not so as to the key issue—*i.e.*, Allstate notified insureds and providers that it was electing the fee schedule amounts unless the provider charges are less, in which case Allstate would pay 80%. State Farm’s policy also adopted a hybrid payment approach, albeit a slightly different one. Nowhere does *MRI Associates* suggest that there can only be one hybrid or alternative payment methodology, which is what Revival improperly assumes.

In short, whilst *MRI Associates* did not decide the precise question at issue here, its reasoning and holding cannot be

¹¹ Contrary to Revival’s suggestion (RAB 45), Allstate’s PIP policy did not need to reference any statutory factors “in its definition of reasonable charges” because any charge less than the fee schedules is necessarily “reasonable.”

reconciled with the district court's summary judgment opinion much less Revival's arguments.¹²

CONCLUSION

Allstate submits that the district court erred as a matter of law by rewriting the PIP statute to *require* Allstate, an insurer, to pay 100% of a medical provider's charges under the PIP statute. There is no precedent for a 100% mandatory payment obligation, and the PIP statute provides just the opposite. Accordingly, this Court should answer the 11th Circuit's certified question (or Allstate's alternative question (AB 30)) in the affirmative, and hold that the PIP statute permits an insurer like Allstate to pay 80% of the medical charges when such charges are less than the fee schedule amounts.

¹² Revival's argument that the fee schedules are a safe harbor for medical bills exceeding the fee schedule amounts (RAB 50) is of no relevance, as the question at issue here is a different one. Specifically, the relevant question is whether payment of 80% of a "reasonable" medical bill *that is less than* the fee schedule amount is permitted under the PIP statute.

Dated: December 12, 2022

Respectfully submitted,

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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 12th day of December, 2022 on all Counsel of Record identified on the attached Service List.

DATED: December 12, 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 3,988 words excluding the Table of Authorities and Table of Contents and otherwise complies with the Rules pertaining initial briefs.

DATED: December 12, 2022

/s/ Peter J. Valeta
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