IN THE SUPREME COURT OF FLORIDA

**CASE NUMBER: SC00-111**

UNITED AUTOMOBILE INSURANCE COMPANY,

Petitioner,

vs.

MARISOL RODRIGUEZ,

Respondent,

****************************************************

ON DISCRETIONARY REVIEW OF A DECISION OF THE DISTRICT

COURT OF APPEAL OF FLORIDA, THIRD DISTRICT

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# ANSWER BRIEF OF AMICUS CURIAE IN SUPPORT OF APPELLEE RODRIGUEZ

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## STATEMENT OF THE CASE AND THE FACTS

Because this is an amicus brief, a statement of the case and the facts is not appropriate. Ciba-Geigy Ltd., BASF A.G. v. Fish Peddler, Inc., 683 So.2d 522 (Fla. 4th DCA 1996).

## SUMMARY OF ARGUMENT

Section 627.736(4)(b), Florida Statutes (1999) requires payment of PIP medical benefits, if the insurance company does not possess reasonable proof that it is not responsible for payment of a particular bill within thirty days of proper receipt of notice of a claim for payment of that bill. An insurance company forfeits its right to contest payment of that bill, if that insurance company fails to timely obtain that reasonable proof within the thirty-day period.

## ARGUMENT

**PURSUANT TO SECTION 627.736(4)(b), FLORIDA STATUTES (1999), AN INSURER FORFEITS THE RIGHT TO CONTEST PAYMENT OF PERSONAL INJURY INSURANCE BENEFITS FOR A COVERED LOSS, IF THE INSURER DOES NOT OBTAIN REASONABLE PROOF TO ESTABLISH THAT THE INSURER IS NOT RESPONSIBLE FOR THAT PAYMENT WITHIN THIRTY DAYS AFTER THE INSURER IS FURNISHED WITH WRITTEN NOTICE OF THE FACT OF A COVERED LOSS AND THE AMOUNT OF SAME.**

The issue before this Court is limited to payment of medical benefits pursuant to Florida's No-Fault Insurance Law.[1] Specifically, this Court must decide whether an insurance company forfeits its right to contest a claim for medical benefits, if that insurance company does not have reasonable proof within thirty days of written notice of each covered loss and the amount of that loss that it is not responsible for payment and fails to make actual payment with that thirty-day period.

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[1] The statute in question, § 627.736, Fla. Stat. (1999), also requires that an insurance company provides disability benefits and death benefits, in addition to medical benefits, for any covered loss. All three of those benefits are subsumed in the concept of personal injury benefits. The legal issue before this Court is limited to the payment of medical benefits.

Forfeiture is the failure to make timely assertion of a right. United States v. Olano, 507 U.S. 725 at 733 (1993). Forfeiture of a known right is not a penalty. For example, one would not refer to the failure to file a notice of appeal within thirty days as a penalty. Likewise, failure to file a law suit within the time limits of the statute of limitations is not a penalty. *See* Sun Coast Intern. Inc., v. Dept. of Business Regulation, 596 So.2d 1118 at 1121 (Fla. 1st DCA 1992).

The statutory provision, which this Court must interpret, was originally enacted in the year 1971. Ch. 71-252 § 7(4)(b), Laws of Fla. That provision, – now § 627.736(4)(b), Fla. Stat. (1999) – as originally written in the enacting session law, provided in pertinent part:

> (4) Benefits ... shall ... be due and payable as loss accrues, upon receipt of reasonable proof of such loss and the amount of expenses and loss incurred which are covered by the policy issued under this act.
>
> ***
>
> (b) Personal injury protection insurance benefits shall be overdue if not paid within thirty (30) days after the insurer is furnished written notice of the fact of a covered loss and of the amount of same. *** [P]rovided, however, that any payment shall not be deemed overdue where the insurer has reasonable proof to establish that the insurer is not responsible for the payment, notwithstanding that written notice has been finished to the insurer. ***

This statute is materially identical to the present statutory wording of paragraph 4(b). It is this wording, which this Court must construe to resolve this case.

### 1. This Court Should Adopt The Holding Of The Highest Court In The State Of New York On This Very Issue.

Florida was one of the first states to adopt legislation providing for no fault automobile insurance. Ch. 71-252, Laws of Fla. At its peak, twenty-four states had adopted no-fault. By 1976, no-fault's progress came to a halt. Only the District of Colombia has adopted a no-fault law since 1976. Since then, six states have repealed their mandatory no-fault laws. Presently, there are ten mandatory no-fault jurisdictions. One of those ten jurisdictions is Florida. Another of those mandatory jurisdictions is New York. Rosenfield, *Auto Insurance: Crisis And Reform*, 29 U. Memphis L. Rev. 69 at 74-75 (Fall 1998).[2]

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[2] Portions of this law review article are contained in the appendix to this amicus brief.

Footnote 16 of this article inadvertently omits Florida as one of the mandatory no-fault states and erroneously includes South Dakota. Robert H. Joost, AUTOMOBILE INSURANCE AND NO-FAULT LAW 2D Ch. 6 (Cumulative Suppl. Oct. 1999).

New York has a no-fault statutory provision, N.Y. Ins. Law § 5106(a) (McKinney 1985),[3] that is materially identical in wording to the relevant language contained in Section 627.736(4)(b), Florida Statutes (1999).

In Presbyterian Hosp. v. Maryland Casualty Co., 90 N.Y. 2d 274, 683 N.E. 2d 1 (1997)[4], the Court of Appeals of New York has interpreted its materially-identical provision, and the regulations promulgated by the Superintendent of Insurance to enforce that statute, to mean that an insurance company can be precluded from asserting a defense to payment[5], if the insurance company does not timely act, as required by New York law, within the thirty-day statutory period. That court rejected the argument that the only sanctions provided for by statute are the payment of interest on the overdue payment and attorneys' fees. That court held that the unavailability of preclusion would materially frustrate the purposes and retard the goals of the speedy payment objective of New York's No-Fault law. That court observed: **"The tradeoff**

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[3] A copy of this New York statute is contained in the appendix to this brief.

[4] A copy of that opinion is provided in the appendix to this brief.

[5] The concept of "preclusion" is the same as the concept of "forfeiture" in the terminology used in this brief.

**of the no-fault reform still allows [insurance] carriers to contest ill-founded, illegitimate and fraudulent claims, but within a strict, short-leashed contestable period and process designed to avoid prejudice and red-tape dilatory practices."** *Id.* at 7.

This concept of forfeiture of an insurance company's right to contest a claim is not new to Florida. This Court has already held that an insurance company forfeits its otherwise-existing right to assert a defense, as a result of an untimely assertion of that defense. That is the situation regarding the Claims Administration statute, § 627.426, Florida Statutes, which imposes a time limitation on an assertion by an insurer of a right to assert a coverage defense. Florida courts have held that an insurance company that fails to comply with the time limits of that statute is precluded from asserting a denial of coverage based on a particular coverage defense. AIU Ins. Co. v. Block Marina Inv., Inc., 544 So.2d 998 (Fla. 1989); Country Manors Assoc., Inc., v. Master Antenna Sys., Inc., 534 So.2d 1187 at 1194 (Fla. 4th DCA 1988)(failure to strictly comply with statute "precluded" insurance company from denying coverage based on any coverage defense).

Concededly, section 627.426, Florida Statutes does not directly apply to the PIP (Personal Injury Protection) statute, § 627.736, Fla. Stat. (1999). Union Gen. Ins. Co. v. Lorenzo, 598 So.2d 161 (Fla. 3d DCA 1992). However, the holding of AIU Ins. Co., *supra*, does establish the fact that the concept of preclusion is not foreign to Florida law and supports the same analytical approach employed by the New York Court of Appeals in Presbyterian Hosp., *supra*.

New York's position is closely aligned with the existing thinking of this Court. On the same day that the New York Court of Appeals decided Presbyterian Hosp., *supra*, that court also decided Cent. Gen. Hosp. v. Chubbs Group Ins. Co., 90 N.Y. 2d 195, 681 N.E. 2d 413 (1997). That decision held that the insurance company forfeited its ability to contest the excessiveness of the medical bills – the equivalent of Florida's issue of reasonableness and necessity of a medical bill. However, the issue of relatedness of the injury to the covered accident was deemed a coverage defense that was not forfeited. The New York Court of Appeals followed the reasoning used by this Court in its earlier decision AIU Ins. Co. v. Block Marina Inv., Inc., 544 So.2d 998 (Fla. 1989) that exclusions from coverage are not forfeited, because that would create a liability that did not exist as a matter of the original insurance contract between

the insurer and the insured.[6] Restated, New York held that this forfeiture of the right to contest a medical bill did not apply to a defense that the injured person had no coverage at all under the PIP policy; but did apply to a challenge by the insurer that the covered event and covered person should not be paid as much money as the medical bill requested.

The holding of Cent. Gen. Hosp, *supra*, also applies to Florida's PIP statute. The first sentence of section 627.736(4) provides that the only benefits that are due as loss accrues are those "covered by the policy" and that the thirty-day period applies to notice of a "covered loss."[7] What is forfeited is litigation over "the amount of expenses" for which the injured person must initially provide reasonable proof to the

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[6] "AIU simply recognizes that section 627.426 does not create or extend nonexistent coverage." Doe v. Allstate Ins. Co., 653 So.2d 371 at 374 (Fla. 1995).

[7] A coverage defense includes exclusions written into the policy. For example, an insurance company can deny payment on the ground that the injury is not the result of a covered incident, not an injury incurred by a covered person, not an incident involving a covered vehicle, or not the correct insurance policy. *Eg*. Blish v. Atlanta Casualty Co., 736 So.2d 1151 (Fla. 1999). By reviewing the sample PIP policy contained in the appendix to this brief, this Court can see for itself what coverage defenses are available to an insurance company.

insurance company.[8]

Under the present PIP scheme, Florida imposes a forfeiture of both the right to contest payment of a claim for medical benefits (the insurer) and the right to obtain payment for a medical benefit (the insured and the medical providers).

Hospitals excepted, every other provider of medical services must provide the insurance company a statement of charges. Those medical providers forfeit any right

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[8] The insurance companies state that the issue in this case is the ability to challenge whether the medical bills are "reasonable, related, or necessary." This is an erroneous statement of the issue before this Court.

That phrase "reasonable, related, or necessary" is only found in section 627.736(7), Florida Statutes (1999). This language was not a part of the original statute, when it was enacted in the year 1971. Ch. 71-252, Laws of Fla. That language did not appear in the PIP statute until the year 1987 and was only applicable to the issue of whether an insurer can lawfully "withdraw payment of a treating physician." Ch. 87-292, Laws of Fla.

The only phrase that appears in the original statute and which could be at issue in litigation under 627.736(4), Florida Statutes (1999) is the phrase "reasonable and necessary." That phrase was used in the original act in only one place, Ch. 71-252 § 7(1). As originally enacted in the same session law as the thirty-day provision, this statute provided in pertinent part: "Every insurance policy complying with the security requirements of section 4 shall provide personal injury protection providing for payment of all reasonable expenses incurred for necessary medical ... services ...."

to collect those charges for medical services or treatment rendered more than thirty days before the postmark of that statement of charges. If not timely in submission of bills, that provider is precluded from collecting his bill from both the insurance company and the insured patient. § 627.736(5)(b), Fla. Stat. (1999).

The covered injured person[9], who seeks medical benefits, also forfeits his right to receive continued medical benefits, if that person unreasonably refuses to submit to a medical examination requested by the insurance company. § 627.736(7)(b), Fla. Stat. (1999).

The forfeitures that apply to both the injured person and the medical provider serve to enable the insurance company to contest the reasonableness and necessity of the medical bills <u>within</u> the thirty-day time limit set by the legislature.

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[9] Under Florida law, the injured person may not be the named insured. The injured person can be either the named insured or a relative residing in the same household or a person operating the insured vehicle or a person struck by the automobile who was not an occupant of a vehicle. § 627.736(1), Fla. Stat. (1999). Thus, the injured person, who seeks payment of PIP medical benefits, <u>may</u> <u>not</u> have a contractual relationship with the insurance company.

### 2. The Insurance Company Has Sufficient Time To Investigate.

The insurance companies imply that thirty days is too short a time to permit them to investigate whether a medical treatment bill is reasonable and necessary. That is not true. One need only understand the actual process involved.

First, the legislature authorizes insurance companies to require that anyone involved in an accident must give an insurance company written notice of an accident as soon as practicable. § 627.736(4)(a), Fla. Stat. (1999). Insurance companies do require this in their policies.[10] Additionally, the legislature requires that notice of the existence of a claim must not be unreasonably withheld by an insured. § 627.736(6)(e), Fla. Stat. (1999). Breach of these conditions can be enforced in court. Consequently, even before the first medical bill is being submitted for payment, the insurance company has the opportunity to begin investigating the coming claim immediately after the accident is reported to it. This provides the ability to immediately

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[10] A sample PIP insurance policy is being included in the appendix to this brief.

investigate true coverage defenses soon after the time of the accident.

Second, the thirty-day clock does not start to run from the moment of the accident. Rather, the thirty-day period does not begin to run until the insurance company receives reasonable proof of loss and the amount of expenses incurred. §627.736(4), Fla. Stat. (1999). These bills must be on an approved form (Health Care Finance Adminstration 1500 form) that permits easy interpretation by the insurance company as to the nature and cost of the medical services provided. §§ 627.736(5)(b) and (d), Fla. Stat. (1999).

Third, all non-hospital medical providers must send medical bills every thirty days for evaluation and verification by the insurance company. Here, the legislature enforces prompt notice by stating that no bill will be paid, if the charge was incurred more than thirty days before the postmark date on the statement of charges. Consequently, the insurance company has time to contest continued treatments. Assuming for the sake of argument that an insurance company fails to contest the reasonableness or necessity of the first set of bills within the first thirty-day period, the insurance company has no time excuse for failing to have reasonable proof in hand for the next thirty-day period and for each subsequent thirty-day period, if treatment

continues.

Fourth, the insurance company is given more than a thirty-day period, when an insurance company requests medical records or what is commonly known as an attending physician's statement. Once the insurance company receives the required written notice that triggers the thirty-day period, the insurance company can make a written request for documentation of the medical necessity and reasonableness of the charges within twenty days. On the surface, it would appear that this would only leave ten more days for the insurance company to evaluate and obtain reasonable proof. That is not true. The legislature has provided that if the insurance company makes a written request within the first twenty days, the insurance company does not have to pay – or obtain reasonable proof that it is not liable – until ten days after the insurance company receives the requested documents. §627.736(6)(b), Fla. Stat. (1999).[11]

All of the above statutory provisions are designed to give the insurance

[11] Note that even here the legislature is operating under the number thirty. Twenty (20) days to request plus ten (10) days after receipt totals thirty (30) days. This fact reinforces the concept of a thirty-day limit to obtain reasonable proof.

companies adequate time to investigate the reasonableness and necessity of a medical bill. The very fact that the legislature has provided all of these additional protections to the insurance companies, itself, establishes that the legislature intended that the insurance companies have reasonable proof in hand within thirty days of the receipt of the particular bill being paid. Indeed, almost all of those provisions expressly mention section 627.736(4)(b).

The period of time is measured from the date that each claim is submitted and received by the insurance company, not from the date of the accident and not from the date that treatment is provided.

Thus, the suggestion that the legislature has not given the insurance company adequate time is false. Given the actual time period involved from the date of the accident, there is no justification for not enforcing a forfeiture of the right to contest the reasonableness and necessity of any particular medical bill, if outside the time period set by the Florida legislature for the insurance company to make a prompt payment of a medical benefit.

3. Principles Of Statutory Construction Support The Concept

Of Forfeiture

In statutory construction, legislative intent is the pole star by which a court must be guided, and this intent must be given effect even though it may appear to contradict the strict letter of the statute and well-settled canons of construction. The primary purpose of the legislation should determine the force and effect of the words used in the act, and no literal interpretation should be given that lends itself to an unreasonable or ridiculous conclusion or a purpose not designed by the lawmakers. Smith v. Ryan, 39 So.2d 281 (Fla. 1949). Statutes should be construed in light of the manifest purpose to be achieved by the legislation. Tampa-Hillsborough County Expressway Auth. v. K.E. Morris Alignment Serv. Inc., 444 So.2d 926 (Fla. 1983).

As already noted, Florida is a mandatory no-fault automobile insurance state. Every jurisdiction that has mandatory no-fault automobile insurance enacted that legislation with the understanding that this type of insurance coverage would guarantee prompt payment of PIP medical benefits. 7 Am. Jur. 2d Automobile Insurance § 31 (ed. 1997); Goodkin v. United States, 773 F.2d 19 (2d Cir. 1985)(preeminent purpose of the no-fault law was to assure the prompt reimbursement of the economic losses suffered by those injured in an automobile accident). Florida has likewise recognized

this universal fact. An objective of this legislation was "insuring prompt recovery of expenses without protracted litigation." Chapman v. Dillon, 415 So.2d 12 at 18 (Fla. 1982); Gov't Employees Ins. Co. v. Gonzalez, 512 So.2d 269 (Fla. 3d DCA 1987)(regarding PIP benefits, foundation of legislative scheme is to provide "swift and virtually automatic payment" so that injured person may get on with his life without undue financial interruption). It is the speedy payment by one's own PIP insurer that counterbalances the various rights that this No-Fault statutory scheme takes away from the insured. Lasky v. State Farm Ins. Co., 296 So.2d 9 at 14 (Fla. 1974).

The person, who is entitled to prompt payment, is the injured person, himself or herself. This Court must also keep in mind a simple principle of contract law. The injured person is the entity legally obligated to pay for medical services provided to him by a doctor or a hospital as a result of an automobile-related accident or loss. Medical providers, who are providing treatment and issuing medical bills for their services, are only third-party beneficiaries of the insurance contract. Orion Ins. Co. v. Magnetic Imaging Syst., 696 So.2d 475 at 477-478 (Fla. 3d DCA 1997). That is why prompt payment is so important.

This Court must give a liberal construction in favor of the injured person to the

thirty-day provision of section 627.736(4), Florida Statutes (1999) – i.e. the original 1971 enactment, Ch. 71-252 § 7(4)(b), Laws of Fla. – in order to effectuate this legislative purpose for this PIP provision. *See* Blish v. Atlanta Cas. Co., 736 So.2d 1151 at 1155 (Fla. 1999).

This construction is further buttressed by the legislative statement in section 627.736(4)(g), Florida Statutes (1999) that it is a violation of the insurance code for an insurer to fail to timely provide benefits as required by the PIP section with such frequency as to constitute a general business practice.

An additional rule of statutory construction focuses on the particular choice of words used. The precise pararagraph at issue, section 627.736(4)(b) states that payment is overdue if not made within 30 days, unless an insurer "**HAS**" reasonable proof. What is significant is the choice of the word "has." That indicates that the insurer must possess reasonable proof at that moment and not some time in the future. Otherwise the legislature would have used the words "subsequently has."

The construction, which the insurance companies want, renders the concept of prompt payment an illusory concept.

### 4. The Conflicting Opinions Of Other Lower Appellate Courts Do Not Withstand Legal Analysis.

Only two lower appellate court opinions comment on the precise forfeiture issue addressed by Perez v. State Farm Fire And Cas. Co., 746 So.2d 1123 (Fla. 3d DCA 1999).

The opinion in Jones v. State Farm Mut. Auto. Ins. Co., 694 So.2d 165 (5th DCA 1997) makes a bald statement that the insurance company does not forfeit its right to contest the amount of medical expenses, if payment is not made within thirty days. This opinion lacks any analysis or legal support for this assertion.

The second opinion, AIU Ins. Co. v. Daidone, 2000 Fla. App. Lexis 8266 (Fla. 4th DCA July 5, 2000), does attempt some analysis. This opinion confuses the difference between a coverage defense that treatment was for an injury that clearly did not relate to the accident, and a claim that the treatment for the covered injury was not reasonable and necessary. The issue certified to that court expressly was limited to whether failure of an insured to comply with the thirty-day period forfeited "the necessity of care or the reasonableness of the bill." On its own, Daidone inserted an

issue that was not presented, namely the issue of whether the bills were "related" to the accident.[12] As already discussed earlier in this brief, "relatedness" involves a coverage defense and is not forfeited by failure to timely obtain reasonable proof. Daidone's conclusion that the issue of relatedness should not be foreited does not address the issue in this case as to whether reasonableness and necessity of the treatment is forfeited as a result of untimeliness. Daidone mixed apples and oranges.

The Daidone opinion also focuses on the different issue of whether a written medical report is required where it is obvious from the medical bill, itself, that the treatment is not related to the accident. Whether a medical report is required has nothing to do with the issue of forfeiture, for the reasons discussed in the immediately following sub-section. Indeed, to the extent that the example used in Daidone is relevant to timeliness, this misguided example establishes that the insurance company had reasonable proof within thirty days upon receipt of that bill. Under Daidone's reasoning, an insurance company can obtain proof at any time that it wants – even in circumstances where the issue of payment is not obvious.

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[12] *See* footnote 8.

Suffice it to say that in this Court, none of the lower appellate court opinions is binding.

5. Red Herring Arguments Of The Insurance Companies Do Not Affect The Applicability Of Forfeiture.

The insurance companies argue about what constitutes "reasonable proof." Certainly a written report from a medical expert would qualify as "reasonable proof." In Perez v. State Farm Fire And Cas. Co., 746 So.2d 1123 (Fla. 3d DCA 1999), both insurance companies conceded that they had no reasonable proof in hand within the thirty-day period. The phrase "reasonable proof" is not defined by the PIP statute. Whether an insurance company possesses "reasonable proof" is an issue that may have to be resolved on a case by case basis. What is important is the fact that there must be some evidence in hand. Reasonable proof cannot consist of either mere suspicion or skepticism of an insurance adjustor. Nor can reasonable proof be satisfied by an attempt to obtain reasonable proof after the thirty-day period in order to support the originally-unsubstantiated position of the insurance company and cover its behind. Here, because the insurance companies had no reasonable proof, it matters

not whether the evidence the insurance companies did not have could have been limited to a written report of a medical expert.[13] That argument is a straw-man argument that is not decisive to the issue of whether a forfeiture can occur and should not be addressed in this case.

There is no dispute that the injured person bears the burden of proof at a trial to establish that a PIP medical claim was both reasonable and necessary. That rule applies at trial. At issue in this case is the issue of forfeiture of the right to raise the issue of reasonableness and necessity at a trial. If the insurance company forfeits the right to raise that issue at trial by its untimeliness, then this issue is not raisable at trial and the injured person has no burden of proof on this forfeited issue beyond the initial statutory requirement that the injured person provide the insurance company with reasonable proof of loss and the amount of expenses.

The insurance companies argue that the thirty-day provision should not lead to a forfeiture of a right to contest reasonableness and necessity of medical services. The

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[13] In Perez, both insurance companies assumed that they needed a report of a medical professional to counter the opinion of the medical provider's expert. What is reasonable proof obviously depends on the facts of each case.

strength of this argument is founded on the assertion that the legislature only intended that payment be made by an insurance company for reasonable and necessary treatment. Additionally, the insurance companies argue that they should always be able to stop fraud.[14]

The answer to those arguments is clear. The entire legislative scheme imposes on everyone some risk of monetary loss in order to achieve the overall purposes of the entire statutory scheme.[15] Only one provision of the entire no-fault act is being

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[14] Fraud has always been a legitimate issue of concern to the insurance industry, as it has to many other businesses. However, the insurance companies misuse that concern in this litigation. Almost all litigation in the courts in PIP cases over reasonableness and necessity does not involve fraud, but rather a conflict in the expert opinion of medical experts. To the extent that there might be a fraudulent claim amongst the numerous statewide claims for medical benefits, there are other preexisting remedies to protect an insurance company. However, the mere possibility of fraud in relatively few claims cannot justify denying prompt payment of medical benefits to the overwhelming number of injured persons with legitimate claims, who need those speedy medical payments to pay the medical bills caused by the covered automobile accident and who they are obligated to pay.

[15] There is a $10,000.00 maximum PIP benefit. § 627.736(1), Fla. Stat. (1999). This amount was set in the year 1978. Ch. 78-374, Laws of Fla. That amount has never been increased by the legislature since the year 1978. The United States Department of Labor consumer price index for medical care establishes that the insured is receiving only $2,500.00 worth of medical reimbursement protection in the year 1999 in terms of 1978 dollars. A copy of that index is included in the appendix to this brief. The index for the year 1978 was 61.8. The index for the year 1999 was

interpreted in this case. The fact that the correct interpretation of this provision has some detriment to the insurance companies is not a reason to vitiate the purpose of this particular provision to provide a speedy payment of medical benefits. Every party loses something in order to ensure that the overall legislative objectives are achieved. Any detriment is offset by the fact that every party gains something else.

The insurance company fails to mention all of the things the insured is required to do and required to sacrifice, all which is part of the <u>entire</u> statutory scheme. Every owner and driver of an automobile is required to obtain PIP insurance coverage and is <u>forced</u> to pay insurance premiums for PIP medical benefits, even if that person never gets in an accident. § 324.022, Fla. Stat. (1999). There is no corresponding reduction of premium or rebate to the insured, if the insured never submits a medical claim or if the insurance company unilaterally reduces payment of a submitted bill. This benefits only the insurance companies. The insured is forced to obtain and keep

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250.6.

The insured is now receiving only one fourth of the benefits that it was promised, when adjusted for inflation. Over the same twenty-two-year period, insurance premiums have soared. The fact that the insurance company seeks to delay prompt payment adds insult to injury.

the required PIP insurance. Failure to do so causes that person to lose his tort immunity for pain and suffering. § 627.737, Fla. Stat. (1999). Failure to do so also prevents a person from having a valid vehicle registration. § 320.02(5)(a), Fla. Stat. (1999). Moreover, failure to possess a valid registration is a criminal violation subjecting that person to incarceration. § 320.02(6), Fla. Stat. (1999). Finally, in exchange for the promise of prompt payment of PIP benefits, an insured must give up the right to sue for pain and suffering, unless he has permanent injury. § 627.737(2), Fla. Stat. (1999).

In this total context, the fact that the insurance companies complain of some potential loss of revenue due to a possible overpayment is an unavoidable circumstance that the insurance companies must bear, just as the insured is subject to the above list of detriments.

When viewing the entire statutory scheme, this Court can understand why the legislature put insurance companies on a prompt time schedule. Just as due process of law does not require the legislature to provide the injured person with an unlimited right to sue for perfectly complete recovery of all of his injuries, Lasky v. State Farm Ins. Co., 296 So.2d 9 at 17 (Fla. 1974), likewise the legislature is not required to

provide an insurance company with an unlimited time period to challenge every bill and provide a complete guarantee that the insurance company will not pay one penny more than it should.

When all is said and done, the construction of the Florida No-Fault Law urged by the insurance company promotes litigation and endless delays in payment well beyond any time that the legislature envisioned. That should not be happening. This Court should not grant a special exception of the thirty-day period to benefit for-profit insurance companies at the expense of the injured citizen.

Mandatory no-fault automobile insurance has always been promoted by insurance companies, because it ensures a continuous flow of revenue for investment to make a profit. See Rosenfield, *Auto Insurance: Crisis And Reform*, 29 U. Memphis L. Rev. 69 at 76,80,85 (Fall 1998). It is now clear after almost thirty-years that many of the original expectations that were the basis for the Florida legislature enacting Florida's no-fault automobile insurance statute and listed in this Court's decision Lasky v. State Farm Ins. Co., 296 So.2d 9 at 16 (Fla. 1974), have not been realized. This fact is clear from national statistics. Rosenfield, *Auto Insurance: Crisis And Reform*, 29 U. Memphis L. Rev. 69 at 87-101 (Fall 1998). This statutory scheme

was held to be constitutional, based on, among other things, the promise of prompt payment. It would be an irony if the insurance companies were to win this particular argument that payments no longer need be prompt only to undo the reasoning of Lasky and render the entire scheme subject to a new successful attack on its constitutionality.

## CONCLUSION

This Court should affirm the principle that an insurance company forfeits the right to litigate in court as to a covered loss the issue of whether particular billed treatment for PIP medical benefits was reasonable or necessary, if that insurance company does not have in its possession reasonable proof that the treatment in question was not reasonable or necessary within the time period established by the legislature.

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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a correct copy of this brief was mailed to (1) counsel for United Automobile Insurance Company, STEVEN STARK, 17th Floor, 100 S.E. 2nd Street, Miami, Florida 33131; (2) counsel for State Farm Fire and Casualty Company, JAMES CLARK, Suite 720, 19 West Flagler Street, Miami, Florida 33130; (3) counsel for Allstate Insurance Company, David Shelton, P.O. Box 1873, Orlando, Florida 32802; (4) co-counsel for Allstate Insurance Company, PETER VALETA, Suite 2500, 150 Michigan Avenue, Chicago, Illinois 60601; (5) counsel for GEICO Insurance Company, VINCENT IACONO, Suite 240, 4890 West Kennedy Blvd, Tampa, Florida 33609; (6) counsel for Marisol Rodriguez and Juana Perez, JOHN RUIZ, 198 N.W. 37th Avenue, Miami, Florida 33125; and (7) counsel for the Academy of Florida Trial Lawyers, Edward Zebersky, Suite 400, 4000 Hollywood Blvd, Hollywood, Florida 33021 on this 13th day of July, 2000.

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