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SUPREME COURT OF FLORIDA

CASE NO. SC00-112

STATE FARM FIRE & CASUALTY COMPANY,

Petitioner,

vs.

JUANA MARIA PEREZ,

Respondent.

Lower Tribunal
No. : 3D99-1481

PETITIONER'S AMENDED BRIEF ON THE MERITS

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INTRODUCTION

This is an appeal from a decision of the Third District Court of Appeal which held that a personal injury protection (PIP) insurer is strictly liable to pay bills submitted for payment, regardless of whether they are properly payable under such coverage, unless it has, in its physical possession, within thirty days after the bill is submitted for payment, a medical report or other proof that the bill is not owed. Throughout this Brief the insured who submitted the bills for payment, JUANA MARIA PEREZ, the original Plaintiff below, will be referred to as "the insured" or "PEREZ". Her PIP carrier, STATE FARM FIRE & CASUALTY COMPANY, the Defendant in the trial proceedings below, will be referred to as "STATE FARM."

References to the original record on appeal filed in the appellate division of the circuit court will be indicated by the symbol "(R.)." References to the Appendix attached to the Petition for Writ of Common Law Certiorari filed in third district below will be indicated by the symbol "(A.)." All emphasis throughout this Brief will be provided by the writer unless otherwise indicated.

CERTIFICATE OF FONT STYLE AND SIZE

STATE FARM hereby certifies, in accordance with this court's Administrative Order of July 13th, 1998, that the style and size of the font utilized throughout this brief is 14 point Calisto MT, proportionately spaced.

STATEMENT OF THE FACTS AND THE CASE

The appellate proceedings in this case originally were taken to review a summary judgment entered in favor of PEREZ for claimed medical expenses, incurred with M.C.L. Health Center, Inc. (M.C.L.), and submitted by PEREZ for payment under her automobile policy's personal injury protection (PIP) coverage. (R. 119-120), **(A.** 10-15). That judgment was entered after the trial court found that STATE FARM **was** responsible to pay PIP benefits for medical bills, regardless of whether they are reasonable, necessary, or related to a car accident, unless it could document that it had received "reasonable proof' that it was not responsible for the payment of the bills within thirty days after their receipt.

This action had originally arisen out of an automobile accident which occurred on March 24, 1996, where PEREZ alleged that she sustained personal injuries although the total property damage sustained by both vehicles amounted to only $287.00. (A.91), **(R.2).** Five days following the accident PEREZ sought medical treatment from M.C.L.

Almost three months later, on June 19th, 1996, STATE FARM received medical bills from M.C.L. Health Center totaling $4,655.00. **(A.39).** These showed that PEREZ had, in those three months, received fifty-four (54)

treatments consisting of hot packs, cold packs, electrical stimulation, and ultrasound.

After receipt of the M.C.L. bills, STATE FARM arranged for PEREZ to see Dr. Stephen Turbin, an orthopedic surgeon, for an independent medical examination. That examination took place on July 17th, **1996,** 28 days after **STATE** FARM's receipt of the bills. Within that time, **STATE FARM** also obtained PEREZ's medical records and submitted them to Turbin in order to allow him to review the treatment provided and render an opinion as to the reasonableness, necessity and relatedness of the medical treatment provided. (A.37, 47), (R.**114).**

On July 26th, **1996,** Turbin forwarded his opinions to **STATE** FARM in two separate medical reports. (R.**114).** In the first, he indicated that PEREZ had reached **maximum** medical improvement as of the date of his examination and that she could be discharged from further medical care. (R.58). In his second report, Turbin outlined his review of the records from M.C.L. and opined that the maximum benefit of physical therapy was achieved within eight **(8)** weeks after the accident. (R.53). He also expressed his opinions that ultrasound provided the same relief as hot packs, and that providing both modalities constituted a duplication of services (R.53), and that nerve conduction studies were not justified and, therefore, unwarranted. (R.47).

Based upon both Dr. Turbin's independent medical examination and his review of PEREZ's medical records, STATE **FARM** reduced payment of the physical therapy treatments and denied payment for nerve conduction studies. (R.114). Thereafter, PEREZ's attorney, to whom she had been referred by M.C.L. (R.56), filed the instant action in the County Court in Miami-Dade County for the medical expenses incurred with M.C.L. (R.1-12).

In reversing a summary judgment entered in favor of PEREZ, the appellate division of the circuit court found that an insurance carrier is not barred from defending a PIP claim on the merits after thirty days had expired. It determined that,

> Florida Statutes §627.736(4)(c) provides that 'overdue payments shall bear simple interest at the rate of 10 percent per year.' This is the only penalty specified by the legislature for an insurer being overdue, although Florida Statutes §§627.736(8) and 627.428 also allows for the recovery of attorneys' fees under certain circumstances. The statute does *not* provide that the insurers' defenses to paying a claim are barred if the insurer does not have reasonable proof within thirty (30) days of receiving the bills that it is not responsible. . .The plain language in Florida Statutes, Section 627.736(4)(b), together with the decision in *Jones v. State Farm,* 694 So. 2d 165 (Fla. 5th DCA 1997), compel this Court to reverse the order granting summary judgment. We hold that an insurer may defend a PIP claim on the merits even when it does not have reasonable proof in its possession, within thirty (30) days of receiving a claim, that it is not responsible for payment of the claim. Such claim is

> overdue, however, and the insured will be entitled to statutory interest and attorneys' **fees** as provided by law. . . Reversed and remanded for further proceedings. Appellee's Motion for Attorneys' Fees is granted contingently on Appellee being the prevailing **party** in the underlying litigation.

State Farm v. Perez, No. 97-383 at **3-4,** 6 (Dade Cir. Ct. May 7th, 1999).

The Third District Court of Appeal granted certiorari **review** of the circuit court's appellate decision and reversed it. It expressed the view that the PIP statute "clearly requires" that an insurer must obtain, within thirty days, a medical report providing proof that it **is** not responsible for payment. The court ruled that failing to have that report in its claim **file** within that time period makes the PIP carrier strictly liable for the bill and strips the insurer of any defenses it may have to the payment of the bill.

Because the decision of the third district below conflicted with the decisions of *Jones v. State Farm Mutual Insurance Company,* 694 *So.* 2d 165 (Fla. 5th DCA 1997); *Derius v. Allstate Indemnity Company,* 723 *So.* 2d 271 (Fla. 4th **DCA** 1998); **and,** *Fortune Insurance Company v. Everglades Diagnostics, Inc.,* 721 So. 2d **384** (Fla. 4th DCA 1998), this court accepted jurisdiction to resolve the issue.

POINT ON APPEAL

WHETHER A PERSONAL INJURY PROTECTION INSURANCE CARRIER IS REQUIRED TO PAY A MEDICAL BILL WHICH IS UNREASONABLE, UNNECESSARY, AND UNRELATED TO AN AUTOMOBILE ACCIDENT, SOLELY BECAUSE IT FAILED TO PHYSICALLY HAVE IN ITS POSSESSION, WITHIN THIRTY DAYS AFTER SUBMISSION OF THE BILL FOR PAYMENT, PROOF THAT THE BILL IS NOT PAYABLE UNDER PERSONAL INJURY PROTECTION COVERAGE?

SUMMARY OF ARGUMENT

Medical bills payable under the PIP statute are limited to those which represent ***reasonable*** expenses for *necessary* medical services ***related*** to a car accident. Medical expenses which do not meet the statutory criteria are not payable under the **statute.**

The PIP statute requires that ***reasonable*** and *necessary* medical expenses which are ***related*** to an automobile accident are ***covered losses*** under the statute. These ***covered losses*** are deemed to be "overdue" if not paid within thirty days after written notice of the fact of a ***covered*** *loss.* Overdue payments are subject to a penalty of interest at a rate of 10% per year. The statute also provides that attorney's fees may be awarded to an insured should covered losses be wrongfully withheld or denied by a PIP **insurer.** These are the remedies

established by the legislature where there has been either late payment or non-payment of PIP benefits for covered losses.

The courts are not free to edit statutes or add requirements to statutes where the legislature did not include them. Despite the clear and unambiguous language of the statute, the Third District Court's decision in the case below has gone beyond what the statute provides in order to create an additional remedy; that is, the forfeiture of an insurer's right to contest the claim after thirty days unless it has "reasonable proof' physically present in its claim file to establish that a claim is *not* payable under the PIP statute.

This decision also turns upside down the rule of law requiring a Plaintiff to carry the burden of proof in breach of contract cases. Decisions out of not only the Fourth District Court, but also the Third District Court itself, have clearly articulated that there is nothing in the PIP statute to suggest any legislative intent to alter the normal dynamics of a law suit by placing the burden on the defendant to prove that a proposed charge or expense is unreasonable or that a given service is not necessary. The application of the lower court's decision to PIP claims, however, establishes a "strict liability" standard which reverses the burden of proof in these cases.

This case is most like *Jones v. State Farm Mutual Automobile Insurance Company, 694* So. 2d 165 (Fla. 5th DCA 1997). There, in a remarkably similar

set of circumstances, the Fifth District Court of Appeal noted that even where an insurance company does not have in its claim file, within thirty days, "reasonable proof' that a bill was not owed, it does not lose its right to contest the claim. Instead, it exposes itself to those statutory penalties outlined above.

In accord with the Jones decision, is the case of ***Pioneer Life Insurance Co. v. Heidenfeldt***, 2000 WL 35809 (Fla. 2nd DCA, January 19, 2000). There, the second district addressed the issue of whether an insurer's failure to conform with the time requirements of §627.613 (which are remarkably similar to those found in the PIP statute) forfeited an insurer's right to deny benefits when the benefits sought where excluded from insurance coverage. The second district harkened to this court's decision ***in AIU Insurance Co. v. Block Marina Investment, Inc.,*** 544 So. 2d 998 (Fla. 1989) and noted that an insurer's failure to comply with time requirements did not result in a forfeiture of an insurer's right to deny benefits when the benefits sought are excluded from insurance coverage.

It certainly cannot be argued that the legislature intended that medical bills clearly ***not*** covered by the PIP statute by being wholly unconnected to an automobile accident would become payable merely after the passage of thirty days. Under the mandate of the third district's decision in the case below,

however, contrary to the clear and unambiguous terms of the statute, those expenses which are clearly not covered by PIP, or even fraudulent, would become payable merely by the arbitrary running of the thirty day time period. The consequence of the practicable application of the third district's decision on an insurance company's ability to control and adjust claims wreaks havoc on the process and can only result in higher insurance premiums for the people of the State of Florida. Because that decision adds judicially created remedies to the statute which were not intended by the legislature, it should be reversed.

ARGUMENT

a. The Statutory Scheme For PIP Benefits

It is apodictic that medical bills payable under PIP coverage are those which result from an accident arising from "the ownership, maintenance, or use of a motor vehicle." §627.736(1), Fla. Stat. (1997). Bills submitted for payment must constitute reasonable expenses for ***necessary*** medical services in order to be payable under the statute. §627.736(1)(a), Fla. Stat. (1997). In short, medical expenses covered by the PIP statute are only those which are ***reasonable, necessary,*** and ***related*** to a car accident. Medical expenses which do not meet these statutory requirements would perforce ***not*** be payable under the statute.

The statutory scheme provides that benefits due from a PIP insurer for expenses which are payable ***pursuant to the statute*** are primary and due and payable as loss accrues upon the carrier's receipt of reasonable proof of both ***the fact*** of the covered loss and ***the 'amount*** of expenses ***covered by the policy.*** ***See*** §627.736(4), Fla. Stat. (1997).

Medical expenses which are ***reasonable, necessary*** and ***related to a covered accident*** are "overdue" if not paid within thirty days after written notice of the fact of a ***covered loss.*** ***Covered expenses*** are not overdue if an insurer has reasonable proof to establish that it is otherwise not responsible for their payment. §627.736(4)(b), Fla. Stat. (1997).

In order to insure prompt and speedy payment of ***covered expenses, the*** statutory scheme specifies certain penalties for a wrongful withholding of benefits. First, any payments deemed "overdue" are subject to interest at the rate of ten (10) percent per year. See §627.736(4)(c), Fla. Stat. (1997). Additionally, the provision providing for attorney's fees should an insurance carrier wrongfully deny a claim found in the general insurance statute, has been grafted onto the PIP statute. See §627.736(8), Fla. Stat. (1997).

Nowhere in the statute is any provision forfeiting an insurer's right to deny expenses not covered by the statute after the passage of thirty days.

In ***the*** case ***sub judice,*** the third district court found that STATE FARM was obligated to pay medical expenses under its PIP coverage regardless of whether these expenses were ***covered expenses*** or were ***reasonable, necessary,*** or ***related*** to the car accident upon which claim was made. The court's determination was based *solely* upon the fact that, within thirty days after the claim had been made, STATE FARM did not physically have possession of documentation of "reasonable proof' that the medical expenses claimed were ***not*** reasonable or necessary or related. In so ruling, however, the court misconstrued the PIP statute and the law of the State of Florida.

b. Statutory Interpretation

In interpreting the PIP statute here, several rules of statutory construction apply. "When construing a statutory provision, legislative intent is the polestar that guides our inquiry and thus 'when the language of the statute is clear and unambiguous and conveys a clear and definite meaning, there is no occasion for resorting to the rules of statutory interpretation and construction. " ***McLaughlin v. State,*** 721 So. 2d 1170,1172 (Fla. 1998)(quoting ***A.R. Douglass, Inc. v. McRainey***, 137 So. 2d 157, 159 (Fla. 193 1). If the statute is clear and unambiguous, the court is not free to add words to steer it to a meaning which its plain wording does not imply. ***See James Talcott, Inc. v. Bank***

of Miami Beach, 143 So. 2d 657, 659 (Fla. 3rd DCA 1962). Additionally, the courts are not free to edit statutes or to add requirements that the legislature did not include. ***See Meyer v. Caruso,*** 73 1 So. 2d 118, 126 (Fla. 4th DCA 1999); and, ***Nationwide Mutual Fire Insurance Company v. Southeast Diagnostics, Inc.,*** 2000 WL 121801 (Fla. 4th DCA Feb. 2, 2000) .

Another rule of statutory construction applicable here is *expressio unius est exclusio alterius*: where one thing is expressed and others are not, the legislature is presumed to have intended to omit the items not expressed. This rule of construction is well established, see, *Finkelstein v. North Broward Hospital District,* 484 So. 2d 1241 (Fla. 1986); ***Thayer v. State,*** 335 So. 2d 815 (Fla. ***1976); Baeza v. Pan American/National Airlines, Inc.,*** 392 So. 2d 920 (Fla. 3d DCA 1980), as is its applicability to a statute which provides a remedy to the exclusion of others. ***See Bachrach v. 1001 Tenants*** Corp., 21 A.D.2d 662, 249 N.Y.S.2d 855 (1964), aff'd, 15 N.Y.2d 718,256 N.Y.S.2d 929,205 N.E.2d 196 (1965) (administrative remedy for alleged religious discrimination was exclusive; no action for compensatory damages would be inferred in absence of legislative intent); see *also Gunn* v. *Robles*, 100 Fla. 816, 817, 130 So. 463,463 (1930) ("Where a particular remedy is conferred by statute, it can be invoked only to the extent and manner prescribed."); ***Department*** *of* ***Professional***

Regulation v. Florida Society of Professional Land Surveyors, 475 So.2d 939 (Fla. 1st DCA 1985) (same).

Here the legislature clearly and unambiguously provided remedies when covered benefits are overdue: a penalty of 10% interest on those overdue benefits; and, attorneys' fee should covered benefits be wrongfully withheld. Nowhere in the statute is there any inference of the existence of the additional remedy grafted onto the statute by the Third District, the forfeiture of the right to contest a claim after the passage of thirty days. As such, the clear and unambiguous remedies provided by the legislature are to the exclusion of any that can be judicially created.

c. The Plaintiffs Burden of Proof

The district court's decision also turns upside down the rule of law recognized in *Derius* v. ***Allstate Insurance*** Co., 723 So. 2d 271, 272 (Fla. 4th DCA 1998), *rev.* ***denied,*** 719 So. 2d 893 (Fla. 1998), requiring the plaintiff to carry the burden of proof in PIP cases. There the court found that,

> Under this [PIP] statute, an insurer is ***not liable*** for any medical expense to the extent that it is ***not a reasonable charge for a particular service or if the service is not necessary.*** In a lawsuit seeking benefits under the statute, both reasonableness and necessity are essential elements of a plaintiffs case. There is nothing in the PIP statute suggesting a legislative intent to alter the normal dynamics of a lawsuit by placing the burden

> on the defendant in a PIP case to prove that a proposed charge was unreasonable or that a given service was not necessary.

Id, at 272.

The application of a concept of "strict liability" to the payment of PIP benefits is simply not found in the plain language of the PIP statute. As the fourth district noted, nothing in the PIP act suggests that the legislature meant to change the dynamics of a lawsuit requiring a plaintiff to prove that the expenses claimed under PIP are reasonable, necessary, and related to an accident. Interestingly, the third district also recognized this principle when it cited to, *Derius* with approval and found, contrary to its decision below, that "[i]n this procedural hurdle [requiring a medical report before PIP benefits may be withdrawn], ***we do not discern a legislative intent to alter the burden of proof in a lawsuit for PIP benefits.***" ***See United Auto. Ins. Co. v. Viles, 726*** So.2d 320 (Fla. 3rd DCA 1999).

d. The Application of Jones v. State Farm

In ***Jones v. State Farm Mutual Automobile Insurance Company, 694*** So.2d 165 (Fla. 5th DCA 1997), an insured submitted bills to his PIP carrier which, he claimed, were incurred as a result of an automobile accident. Because of its concern that the bills were not causally related to the accident, the carrier chose not to pay the bills within the thirty day period provided by statute but,

instead, scheduled the insured to be seen by an independent medical examiner. The insured filed suit and refused to attend the medical examination because, he maintained, it was scheduled outside the municipality of his residence. In reversing a summary judgment for the insurance carrier, the fifth district court found that whether the refusal to appear at the medical examination was reasonable under the circumstances was a question of fact and, therefore, not an appropriate issue for summary judgment. The court there also found that although the carrier ***did not*** have reasonable proof that it did not owe the claim in its file within the statutory thirty day period this fact was ***not*** dispositive of the issue of whether the carrier could validly contest the claim.

> ***Although we cannot credit Jones' contention that State Farm's failure to pay Jones' surgical bills within thirty days relieved him of any further obligation under the policy and requires that judgment be entered in his favor, we*** do agree with Jones that the summary judgment in favor of State Farm must be reversed.. ..Thus, State Farm is exposed to the statutory penalties attendant to an "overdue" claim. ***State Farm does not, however, lose its right to contest the claim.*** For this reason, State Farm's failure to pay the claim in thirty days does not relieve Jones from the obligation to submit to an independent medical examination.

Id., at 166.

In its decision below, the third district determined, contrary to ***Jones ,*** that medical expenses cannot be contested by an insurer unless it can show

that it has actually received written proof that it *does not* owe a claim within thirty days of its receipt. The court below acknowledged the ***Jones*** decision but felt that the language cited above was dicta. Even a cursory review of the factual underpinnings in ***Jones,*** however, demonstrates clearly that the issue of whether the carrier loses the right to contest the claim was instrumental to the holding of the case.

To apply the reasoning of the third district in this case would engraft provisions from one section of the PIP statute (the thirty day provision for determining when interest becomes due) onto another (the provision allowing an insurer the right to an independent medical examination), contrary to the plain meaning of the statute.

e. The Realities of the Third District's Rationale

In its case of ***United Auto. Ins. Company*** *v. Viles*, 726 So. 2d 320 (Fla. 3rd DCA 1999), the third district determined that §627.736(7) of the PIP statute required an insurer to first obtain a physician's report before refusing to pay further medical bills under the statute. While it conceded that the independent medical examination provision of section 627.736(7) was "intended to give insurers an opportunity to determine the legitimacy of a claim so that an appropriate decision can be made as to whether benefits should be paid," see

U.S. Security *Ins.* Co. v. *Silva*, 693 So.2d 593, 596 (Fla. 3d DCA 1997), it found that an insurer is precluded from withdrawing payment to a treating physician unless that decision is supported in writing by an expert that the treatment does not comply with the statutory criteria. There it ruled that if the insurer were to act without complying with the procedural requirement, any termination of payment would be ineffective.

In *Viles*, then, the third district found that a report from a physician is a condition precedent to the termination of benefits under the PIP act. In its decision below, it now attempts to graft onto that requirement an additional, judicially created, condition that the independent medical report be physically in the insurer's possession within thirty days of the bill being submitted for payment. This simply ignores the realities of dealing with the modem-day medical community. It is submitted that there are few instances where physicians will make time, on short notice, to involve themselves in claims disputes arising under an insurance policy.[1] Once the claim is received and reviewed by a claims examiner, and a decision is made to seek the independent review of the matter by a physician, it becomes very difficult, if

[1] In *Allstate Insurance* Co. *v. Boecher*, 733 So. 2d 993 (Fla. 1999), this court may have inadvertently discouraged the establishment of continued working relationships between insurance companies and the medical community by opening to discovery financial information that many physicians once considered private. The unintended result of that decision has a reluctance of many physicians to become involved in disputes of this type.

not impossible, to find a physician who, within a matter of days, will set aside the time necessary to examine an insured, review the necessary medical documentation, dictate a report, and provide that report to the insurance carrier.

Additionally, obviously unrelated medical expenses, if submitted for payment in small amounts, would automatically become payable within thirty days unless the insurer invests the several hundred (or more) dollars necessary to seek medical review of the charges. The practical difficulties in applying the third district's logic on these issues has resulted in the inability of the insurance industry to exercise any meaningful control at all on the claims process in the PIP arena. The loser when this lack of any control occurs is, of course, the premium paying citizens of the State of Florida.

f. The Correct Approach

The correct approach to the question of the meaning of the thirty day provision is, it is submitted, found in the Fourth District Court of Appeals. That court, in *Fortune Insurance Company v. Everglades Diagnostics, Inc., 721 So.* 2d 384,385 (Fla. 4th DCA 1998), refused to engraft the thirty day requirement of section 627.736(4)(b) onto another section of the PIP statute. There, in discussing the application of the thirty day provision to the PIP arbitration provision found at section 627.736(5), the court noted,

> [I]t is difficult to understand the plausibility of a holding that arbitration under section 627.736(5) is lost unless a PIP insurer demands it within 30 days of receiving the unpaid bills. The supposed time limitation for demanding arbitration is based on an interpretation of section 627.736(4)(b)'s provision that bills are overdue if unpaid within 30 days of notice of the loss and amount. We think, however, that the providers have simply read too much into the 30-day overdue provision.
>
> Section 627.736(4)(b) says that PIP benefits paid under this section "shall be overdue if not paid within ***30*** days.". . . Section 627.736(4)(c) says that "[a]ll overdue payments shall bear simple interest at the rate of 10 percent per year." As we understand these two provisions, they merely make the PIP insurer liable for interest on such claims if payment is not made within ***30*** days from the notice. ***See Martinez v. Fortune Ins.*** Co., 684 So.2d 201 (Fla. 4th DCA 1996) (statute makes claims for PIP benefits overdue when not paid within 30 days from receipt; failure of insurer to pay claim within 30 days subjects insurer to interest on claim). ***Hence, appropriately read, the function of the statute is to define when interest begins to accrue on unpaid PIP benefits.***
>
> The text of section 627.736(4) certainly does not mention the arbitration provision in section 627.736(5), which itself also fails to mention the 30 day provision in section 627.736(4)(b). While we are required to read statutes in their entirety, we are not free to add provisions to parts of a statute under the guise of such reading. Consequently, we are unable to agree that there is any 30-day requirement on the enforcement of the subsection (5) arbitration provision.

Id. at 385.

Contrary to the reasoning of the *Everglades Diagnostics* case, the third district's interpretation of the statute would add the thirty day requirement of §627.736(4)(b) for determining when a bill becomes overdue onto the entirely separate portion of the statute which authorizes an independent medical examination, §627.736(7).

Further support for this view is found in *Pioneer Life Insurance Company v. Heidenfeldt*, 2000 WL 35809 (Fla. 2nd DCA January 19th, 2000). There the second district addressed the issue of whether the failure to conform with the time requirements of section 627.613 (which are remarkably similar to those found in the PIP statute) forfeited an insurer's right to deny benefits when the benefits sought were excluded from insurance coverage. In finding that an insurer retained the right to question benefits outside of the time strictures of the statute, that court harkened to this court's decision in *AIU Insurance Company v. Block Marina Investment,* Inc., 544 So. 2d 998 (Fla. 1989). It noted that,

> The supreme court held that the insurer's failure to comply with the time requirements of section 627.426(2)(a) did not result in the insurer losing the right to refuse to cover the insured's defense where the coverage sought was expressly excluded or otherwise unavailable under the policy. See *id.* The supreme court reasoned that to rule otherwise would in effect "give insurance coverage to Block Marina ... at a time when the marina operator's legal liability endorsement

> had been eliminated from the policy and the contract of insurance expressly excluded such losses from coverage. " ***Id.***
>
> Based on our reading of section 627.613, we hold that a failure to comply with the notice requirements of section 627.613(2) does not result in a forfeiture of an insurer's right to deny benefits when the benefits sought are excluded from the insurance coverage. As ***the supreme court noted in*** *AIU Insurance* ***Co., to force coverage in this situation would in effect require an insurer to provide coverage for a risk it may never have agreed to undertake. See*** *AIU Ins.* ***Co., 544*** So.2d at 999.

In summary, the statutory scheme of the PIP act calls for a two-step analysis in determining whether medical bills are "overdue" after being submitted for payment under PIP. First, the medical expense submitted must be a ***covered expense*** which is ***reasonable, necessary, and related*** to a car accident. See, §627.736(1)(a), Fla. Stat. (1997). That is, the initial determination to be made, in considering whether benefits are ***overdue,*** is whether the benefits ***are payable under the statute at all.***

Second, those expenses ***that are payable*** under the PIP statute must be paid within thirty days after the insurer receives notice of the loss and the amount of the claim. An insurance carrier may be "saved" from the imposition of the statutory penalties of attorney's fees and interest where payment is not made within 30 days, even if the expenses are later found to be

covered expenses, only where the carrier has relied upon reasonable proof that the expenses are not payable under the PIP statute.

Logic supports this view of the statutory scheme, as does the clear language of the statute. Certainly, it cannot be argued that the legislature intended that medical bills clearly *not* covered by the PIP statute would be made payable under sections 627.730-627.7405 merely because an insurer, for whatever reason, was unable to "paper" its file within thirty days with "reasonable proof' that the expenses were not covered expenses. Under the mandate of the third district's decision below, however, contrary to the clear and unambiguous terms of the statute, even fraudulent claims for expenses which are *clearly not covered* by PIP *would be made payable* merely by the arbitrary running of a thirty day time period. This court cannot allow such a bizarre interpretation of the act to be given effectiveness.

CONCLUSION

As shown, then, the decision of the third district determining as a matter of law that STATE FARM lost its right to contest a claim for medical bills submitted solely because it failed to secure, within thirty days, proof that the medical bills were not covered by the PIP statute is not supported by the plain language of the statute, the public policy of the state, or existing case law. As such, the decision below should be overturned and the matter remanded to the

trial court for further proceedings as to the relatedness, reasonableness, and necessity of the expenses submitted.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing was mailed on June 13, 2000, to: AMADO ALAN ALVAREZ, ESQUIRE, Attorney for Respondent, Suite 209, 7000 SW. 97th Avenue, Miami, Florida 33 173. Telephone: (305) 271-1097; JOHN H. RUIZ, ESQUIRE, 198 North Douglas Road, Miami, Florida 33125. Telephone: (305) 649-0200; STEVEN STARR, ESQUIRE, Fowler, White, et al., Bank of America Tower, 17th Floor, 100 SE. 2nd Street, Miami, Florida 33131; NORMA G. KASSNER, ESQUIRE, 3909 N.E. 163rd Street, Suite 204, North Miami Beach, Florida 33160. ARMANDO A. BRANA, ESQUIRE, 3971 S.W. 8th Street, Suite 301, Coral Gables, Florida 33134-2937; ROBERT A. ROBBINS, ESQUIRE, Suite 400, 9200 South Dadeland Boulevard, Miami, Florida 33156; DAVID B. SHELTON, ESQUIRE, Rumberger, Kirk & Caldwell, P.O. Box 1873, Orlando, Florida 32802. Telephone: (407) 839-4511; and, PETER J.

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