IN THE SUPREME COURT OF THE STATE OF FLORIDA

ALLSTATE INSURANCE COMPANY,

Petitioner.
vs.

CASE NO.: SC01-2444
L.T. CASE NO.: 1D00-2974

DINO KAKLAMANOS, ET AL.,

Respondent.
_____/

VERON CARAVAKIS,

Petitioner.
vs.

CASE NO.: SC02-198
L.T. CASE NO.: 2D00-4027

ALLSTATE INDEMNITY COMPANY, ETC.,

Respondent.
_____/

ON APPEAL FROM THE FIRST AND SECOND
DISTRICT COURTS OF APPEAL (CONSOLIDATED)

_____

AMICUS CURIAE BRIEF OF THE ACADEMY OF FLORIDA TRIAL LAWYERS (AFTL)

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ISSUE PRESENTED ON APPEAL

The Academy of Florida Trial Lawyers (AFTL) agrees that the crux of the issue in this appeal involves the type of injury an insured must suffer to have standing to bring a lawsuit against his or her PIP insurer. This brief addresses that issue squarely, while also touching upon the certiorari issue, and the validity of the Allstate indemnity policy provision in general.

STATEMENT OF INTEREST OF AMICUS CURIAE

The Academy of Florida Trial Lawyers (AFTL) is a large voluntary statewide association of more than 4,000 trial lawyers concentrating on litigation in all areas of the law. The members of the AFTL are pledged to the preservation of the American legal system, the protection of individual rights and liberties, the evolution of the common law, and the right of access to courts. The AFTL has been involved as amicus curiae in hundreds of cases in the Florida appellate courts and this Court. The lawyer members of the AFTL care deeply about the integrity of the legal system and, towards this end, have established an amicus committee for the purpose of considering requests by trial lawyers for amicus assistance. While not every request for amicus assistance is granted by the AFTL, the committee considered the issues presented in this case to be of importance, especially because the specific issues have never before been considered by this Court, and voted to seek leave of this Court to

appear as amicus.

This is an important case about a PIP insurance policy provision which unilaterally attempts to prohibit insureds from suing their insurers after 30 days, even when the company denies or reduces PIP benefits. Access to courts is a concept fundamental to the protection of individual rights and liberties. If insurers can take away the right to sue from insureds, claiming the injuries they suffer are not "enough" to give them standing to question insurers' willy-nilly decisions on payment of benefits, the PIP statute is rendered virtually meaningless. The District Court of Appeal recognized that Allstate's policy does not change its obligations under the PIP statute contrary to the circuit court's ruling. The appellate decision also highlighted why ruined credit, or compromised doctor/patient relationships constitute an "injury" conferring standing on Allstate's insureds.

Thus, the issues in this case are of great public importance, bearing on the issue of the integrity of the PIP statute, access to our system of justice, and standing to bring claims. The members of the AFTL respectfully assert that their input may be of assistance to the Court in resolving the issues raised in this case.

STATEMENT OF THE FACTS AND CASE

AFTL adopts the statement of the case by Plaintiffs/Respondents, Dino Kaklamanos and Keely Kaklamanos in their Answer Brief.

SUMMARY OF THE ARGUMENT

The First District properly exercised its certiorari jurisdiction when it found the circuit court's opinion to have violated clearly established PIP law rendering insurers potentially liable for the failure to pay medical bills within 30 days of receiving them. While the First District tangentially addressed issues of standing, its ruling quashed the circuit court's opinion based upon the lower court's disregard of well established PIP law. Allstate's indemnity provision simply does not alter its statutory obligation to pay the insured's reasonable and necessary medical expenses within 30 days.

Despite Allstate's and NAII's stated interest of policing unscrupulous medical providers and attorneys, attempting to lower the insured's PIP co-payments, and singlehandedly relieving the burdens of our overworked courts, none of those factors have any effect on an insured's statutory right to bring a lawsuit when Allstate fails to pay medical expenses. A simple promise to pay a judgment or defend a lawsuit does not insulate an insured from the harms which could result from Allstate's failure to pay medical bills. A ruined credit history and the harassment of bill collectors, among other things, are certainly enough to confer standing on insureds to bring PIP lawsuits despite Allstate's indemnity provision.

Finally, because the policy language at issue directly contravenes the intent of the PIP statute, it is volative of public policy and should be stricken as invalid by this

court.

ARGUMENT

I. THE FIRST DISTRICT PROPERLY EXERCISED CERTIORARI REVIEW BASED UPON A DECISION WHICH VIOLATED CLEARLY ESTABLISHED PIP LAW.

While the AFTL admittedly does not have a specific interest in this court's rulings on certiorari jurisdiction, it wishes to point out to this Court that the First District clearly had jurisdiction to review the circuit court's opinion, based upon that court's fundamental misapplication of a rule of well established law. Allstate erroneously isolates the issue of law the First District sought to correct as one involving standing. That interpretation of the First District's opinion, respectfully, is incorrect. According to the court below:

> We quash the circuit court's decision because it applies a fundamentally incorrect rule of law. The Florida Motor Vehicle No Fault Law makes Allstate an 'indemnitor against liability' for reasonable and necessary medical expenses incurred by persons the PIP or Med Pay provisions cover. 'An expense is the same as a debt, and it has been incurred when liability for payment attaches.'

Kaklamanos v. Allstate Insurance Co., 796 So. 2d 555, 561 (Fla. 1st DCA 2001), rev. granted, (Table No. SC 01-2444, SC 02-198).

The "fundamental incorrect rule of law" to which the court referred, was the clearly established, statutorily created rule, that insureds may sue their PIP insurers for the failure to pay reasonable and necessary medical expenses within 30 days. The First District reasoned that the language in Allstate's policy did not purport to place any restrictions on an insured's right to sue for untimely payment. See, Id. at 558. Interestingly, the standing issue arose in the opinion only in a footnote, as an aside to explain why after 30 days passes, an insured may sustain enough "injury" to sue, notwithstanding the physician's failure to pursue collection of the unpaid amount of the bill.

In distinguishing the opinion in Rader v. Allstate Ins. Co., 789 So. 2d 1045 (Fla. 4th DCA 2001), cause dismissed, 816 So. 2d 128 (Fla. 2001), where the court held that the absence of unpaid medical bills defeated the insured's standing to allege anticipatory breach because 30 days had not elapsed before suit was filed, the First District noted that "nothing in that opinion offered any support for the view that an insured cannot sue for PIP or Med Pay benefits **30 days after properly presenting a medical bill that the insurer refused to pay**" (Emphasis added). Id. at 560. The First District further reiterated the statutory reality, that there is no legal obligation to

assign benefits to providers, and the insured who owes payment to the medical providers generally cannot pay those bills without first receiving the PIP benefits. Id. at 560. Therefore, irrespective of the Allstate policy language, after 30 days passes, the plaintiff's statutory right to sue the insurer accrues. By ruling that the insureds lacked standing to sue because of the policy language, even though the 30 days to pay the bill had passed, the circuit court violated established law and the First District properly granted certiorari. The court's discussion regarding the distinction between contracts of indemnity requiring reimbursement, and contracts of indemnity against liability, served only as an explanation of the court's ultimate opinion that a right of action arises 30 days after notice to the insurer that reasonable and necessary medical treatment to its insured has resulted in a debt.

Interestingly, even Allstate seems to recognize the appropriateness of certiorari jurisdiction. Allstate's brief describes to this court the two separate arguments the Kaklamanoses raised in their petition for certiorari to the First District:

> First, they argue that the indemnification provision impeded their access to the courts. (Pet. Cert. at 8). Second, **they claim the policy provision was invalid because it was inconsistent with Florida's no-fault insurance law**. (Pet. Cert. at 9-10). The First District rejected both contentions summarily. See, Kaklamanos, 796 So. 2d at 561, n. 7. Ironically, then, the Kaklamanoses themselves failed to identify or raise the very principle of law the First District **implicitly determined** was 'clearly established.'

(Initial Brief of Defendant/Petitioner, Allstate Insurance Company, pp. 13-14)(Emphasis added).

The First District's opinion actually demonstrates that while it rejected the Kaklamanoses' access to courts argument, it most certainly accepted their position that "the policy provision was invalid because it was inconsistent with Florida's No Fault Insurance Law." It was the inconsistency with the No Fault Law--specifically the well settled nature that insurers incur the risk of owing interest and attorneys' fees when they refuse to pay medical expenses within 30 days--that ultimately led the First District to grant certiorari jurisdiction. Allstate's language that the First District only "implicitly" determined that it was the violation of clearly established law on standing, reveals that even it recognized that certiorari was likely not granted by that court based on the standing issue.

While it is not necessarily the place of the Amicus to argue in favor of the lower court's determination regarding certiorari jurisdiction, it is an important threshold issue to the merits of this case. As a result, the AFTL submits that the First District properly granted certiorari based on the circuit court's violation of well established PIP law, and this court should affirm that decision in its entirety.

II. ALLSTATE'S INDEMNITY PROVISION DOES NOT ALTER ITS STATUTORY OBLIGATION TO PAY REASONABLE AND

NECESSARY MEDICAL EXPENSES WITHIN 30 DAYS.

Apropos of the First District's important ruling that Allstate incurred potential liability for medical expenses when it refused to pay the insured's bill, the First District held that Allstate's indemnity language insures against liability rather than loss. In reaching this conclusion, the court explained:

> The distinction between contracts of indemnity against liability and contracts of indemnity against loss has caused a good deal of confusion. **The former may be defined as an undertaking of the indemnitor to stand in the place of the indemnitee in the performance of some act, as in the payment of a debt due to a third person.** The right of action springs into existence with the accrual of liability and the failure to discharge it. The contract of indemnity against loss is an undertaking to repay or reimburse the indemnity to make good the actual loss which he may suffer. The indemnitee, therefore, cannot recover on the covenant until he has paid or otherwise satisfied the obligation. Gaines v. MacArthur, 258 So. 2d 8, 10 (Fla. 3rd DCA 1971)(Emphasis added).

The Gaines court further stated:

> Whether a contract is one of indemnity against liability or against loss must necessarily depend on its terms and the intent of the parties. Contracts of indemnity are, however, strictly construed, unless it clearly appears otherwise, the contract will be held to be against loss. Id.

Under the court's holding that irrespective of the existence of the indemnity provision, Allstate incurred potential liability for payment of Mrs. Kaklamanos's bill once 30 days

had passed, the First District had no need to interpret the actual language of Allstate's indemnity provision. Such interpretation was unnecessary because the "right of action brings into existence with the accrual of liability and the failure to discharge it." Because liability had already accrued, the court found the provision indemnified against liability.

Even if this court were to decipher the policy language, the indemnity provision itself reveals that it is a contract of indemnity against liability, and not merely against loss. Nothing in the provision speaks of holding the insured harmless, or paying the insured back for the expenses he or she may incur. Instead, Allstate says it will pay all expenses and any judgment. Compare, Classic Concepts, Inc. v. Poland, 570 So. 2d 311 (Fla. 4th DCA 1990), rev. denied, 581 So. 2d 163 (Fla. 1991)(Policy contained language stating "it is the purpose of this insurance to indemnify the insured for their legal liability only to the amount which they are obligated to pay and do pay on such merchandise by reason of losses caused as herein defined"). Further compare, Gaines, 254 So. 2d at 9 (Letter held to be a contract of indemnity against loss stated: "I will personally hold you and the Gaines Construction Company harmless on the entire transaction, including but not limited to any claims, accounts or obligations incurred or arising out of the construction and development of Haven Green.")

While Allstate argues that its contract is clearly one against loss and not against

liability, even its own Amicus, the NAII, wrote:

> In short, the provisions were intended **to remove the insured from the dispute over improper billing**. Amicus Brief of National Association of Independent Insurers (NAII), p. 8. (Emphasis added).

"Removing the insured" from the dispute over improperly billing, necessarily implies that Allstate "stands in the shoes" of that insured during the dispute. Once Allstate stands in those shoes, like the Gaines court explained, its contract of indemnity is against liability, and not merely against loss.

III. BECAUSE THE INSUREDS HAVE A SUFFICIENT INTEREST AT STAKE IN THIS CONTROVERSY WHICH WILL BE AFFECTED BY THE OUTCOME OF THE LITIGATION, THEY HAVE STANDING TO BRING THIS LAWSUIT.

Floridians have standing to bring lawsuits when they demonstrate a sufficient interest at stake in controversy which will be affected by the outcome of litigation. See, e.g., Khazaal v. Browning, 707 So. 2d 399, 400 (Fla. 5th DCA 1998). Standing arises when a party has such a legitimate interest in a matter as to warrant asking a court to entertain it. See, Jamlynn Investments Corp. v. San Marco Residences of Marco Condominium Ass'n, Inc., 544 So. 2d 1080, 1082 (Fla. 2nd DCA 1989) citing, Argonaut Ins. Co. v. Commercial Standard Ins. Co., 380 So. 2d 1066, 1067-1068 (Fla. 2nd DCA), rev. denied, 389 So. 2d 1108 (Fla. 1980).

The Fifth District once found standing to exist where the plaintiff alleged a "potential" injury. See, Gieger v. Sun First Nat'l Bank of Orlando, 427 So. 2d 815, 817 (Fla. 5th DCA 1983). In a case involving garnishment proceedings over a mortgage, the Fifth District ruled that appellant had standing because his "potential injury" would occur at a later point when the payments incident to the garnish note, which were committed by a pledge agreement to the payment of the mortgage on another person's new home, were diverted to pay off the Gieger's debt to the bank.

Addressing a similar standing issue arising out of the identical Allstate policy provision, one Illinois court also rejected Allstate's argument, and found the plaintiff had standing to bring suit even though he had not suffered an "actual" injury. See, Puritt v. Allstate Ins. Co., 672 N.E.2d 353, 355-356 (Ill. App. 1996),[1] appeal denied, 677 N.E.2d 971 (Ill. 1997). The Puritt court criticized Allstate for its desire to "stand aside while doctors or their collection agencies press the patient for payment of bills." Id. at 355. It then disdainfully noted, that Allstate's approach, "threatens irreparable injury to the doctor-patient relationship," and "invites the filing of lawsuits in an already congested court system." Id. at 355-356.

[1]Puritt is admittedly distinguishable in that plaintiff there paid the disputed bill himself. However, while that fact is obviously material, the court's reasons for ruling the insured had standing are most instructive here.

The Kaklamanos court underscored similar distasteful eventualities which it rightfully determined caused enough "injury" to confer standing:

> In addition to the **inevitable effects on the doctor/patient relationship**, Allstate's argument that Plaintiff will sustain no damages as a result of wrongful non-payment fails because the indemnification provision ignores the **harmful consequences to an insured's credit history and financial future** caused by the mere filing of a credit driven lawsuit. Even if Allstate pays any judgment obtained by the medical care provider, the insured's credit history will reflect the untimely payment and subsequent judgment.

Kaklamanos, 796 So. 2d at 559, n. 4 (citing, Jones v. Allstate Insurance Co., 7 Fla. L. Weekly Supp. 541, 542 (Fla. Escambia Cty. Ct. Mar. 26, 2000)(Emphasis added). The Second District also recently endorsed Kaklamanos, and ruled that insureds could be damaged by an insurance company's failure to pay a claim even if the insured has not already paid or been sued by the medical provider. See, Burgess v. Allstate Indem. Co., 27 Fla. L. Weekly D814, 2002 WL 529516 (Fla. 2nd DCA April 10, 2002).

Still, Allstate claims that it is impossible for an insured to suffer an injury when the policy explicitly promises to "pay resulting defense costs and any resulting judgment against the insured person." (Resp. App. at 852-853). Simply because Allstate's self-professed kindness towards its insureds will protect them from having to pay a lawyer and a resulting judgment, does not alleviate the myriad of other

detrimental consequences which will befall the insured.

Allstate's policy does not address the harassment and embarrassment its insureds could suffer from the constant barrage of letters and phone calls seeking payment of bills, even if the medical provider chooses never to file a lawsuit. And what physician in his or her right mind would treat an injured victim with Allstate PIP coverage knowing that filing a lawsuit is a virtually mandatory condition precedent to getting paid? Allstate does not seem to care that the policy obligates the insured to attend hearings or trials at virtually minimum wage, while it retains the privilege of refusing to pay bills at its whim. Nor does Allstate have a problem knowingly casting its insureds as defendants in lawsuits (rather than as the plaintiff as the law allows), or having a final judgment forever blacken an insured's credit history, which will occur **even if the judgment is paid**. The only way to neutralize these perils to which Allstate is oh-so-willing to expose its insureds, is for this court to rule that such perils amount to a sufficient injury concerning standing to sue.

The Amicus Brief filed by the National Association of Independent Insurers (NAII) never addresses the injuries justifying standing that the indemnity provision overlooks as set forth in Kaklamanos and Burgess. Instead, the NAII sidesteps the actual issue by purporting to act as the great protector for the pathetic, misguided inept insureds who have no business being involved in billing disputes, and who would save

greatly on their co-payments if they would just allow their trusted advisor, Allstate, the complete unfettered discretion to refuse to pay bills. Despite Allstate's magnanimous spin on the effect of its indemnification provision, its policy directly contravenes the plain language of the PIP statute, as well as the statutes's legislative intent. Section 627.736(5)(a), Florida Statutes (1999), by its plain language makes it clear that the right to personal injury protection benefits from the insurer belongs to the insured; not to the doctor, the MRI facility or anyone else. See, also, Kaklamanos, 796 So. 2d at 560 ("An insured, who is under no legal obligation to assign benefits to providers....").

Neither Allstate nor NAII has provided this court with any authority allowing it to deviate from the mandatory statutory provisions simply because the insured's medical treatment generates a billing dispute, or because of the insurance company's burning concern regarding the amount its insureds have to pay as part of their 20% statutory co-payments. All of the philanthropy and fraud prevention in the world cannot undo the fact that the statute imbues the insured with the right to receive payment of insurance benefits (as noted in Kaklamanos), and the right to enforce those benefits. Certainly, if the legislature had intended to confer insurers the extraordinary power to deprive insureds from bringing lawsuits, it would have said so when it overhauled the PIP statute in 2001.

This court is not likely to forget its recent proclamation in Ivey v. Allstate Ins.

Co., 774 So. 2d 679, 683-684 (Fla. 2000):

> Without a doubt, the purpose of the no-fault statutory scheme is to 'provide swift and virtually automatic payment so that the injured insured may get on with his life without undue financial interruption.'
>
> * * *
>
> For over a quarter of a century, Florida courts have consistently held:
>
> > [T]he statutory language is clear and unambiguous. The insurance company has 30 days in which to verify the claim after receipt of an application for benefits. There is no provision in the statute to toll this limitation. The burden is clearly upon the insurer to authenticate the claim within the statutory time period. To rule otherwise would render the recently enacted 'no fault' insurance statute a 'no pay' plan - a result we are sure was not intended by the legislature.

It is certainly impossible for an injured insured to "get on with his [or her] life" when plagued with a constant barrage of bills, telephone calls, and threatening notices about unpaid balances. When persons, who through no fault of their own, are injured in accidents, and are then advised that their physician of twenty years will no longer treat them based upon the physician's desire to avoid protracted litigation with the victim's insurance company, moving past the accident also becomes rather difficult.

Even if this court were to assume that the video fluoroscopy which Allstate

refused to pay for in this case is the most unnecessary and inaccurate diagnostic tool known to the medical community, our legislature and our courts have developed a certain legal process for Allstate to contest payment. Once a jury decides whether medical treatment the insured received was reasonable, necessary and related (see, e.g., Garrett v. Morris Kirschman & Co., 336 So. 2d 566, 571 (Fla. 1976)), Allstate is either freed from its obligation to pay, or it becomes liable for payment of the bill, as well as interest and attorneys' fees. See, United Automobile Ins. Co. v. Rodriguez, 808 So. 2d 82, 86 (Fla. 2001).

Despite concerns about PIP fraud noted in the Second Interim Report of the Fifteenth Statewide Grand Jury, the legislature has not removed the insured's right to sue his or her insurer when medical bills are not timely paid. Certainly, this court should not undermine the legislature and confer such power on Allstate.

IV. BECAUSE THE POLICY LANGUAGE AT ISSUE DIRECTLY CONTRAVENES THE INTENT OF THE PIP STATUTE, IT IS VIOLATIVE OF PUBLIC POLICY AND SHOULD BE STRICKEN BY THIS COURT.

In interpreting the case involving a policy of insurance, any applicable statute is manifestly superior to, and controls the policy, thereby superceding any conflicting provisions of the policy. 7 Couch on Ins. §109:19(3rd Ed.), citing, State Farm Mut. Auto. Ins. Co. v. Chapman, 415 So. 2d 47 (Fla. 5th DCA 1982), rev. denied, 426 So.

2d 29 (Fla. 1983). When insurers have attempted to include impermissible policy provisions in an attempt to avoid compliance with statutory requirements, courts have stricken those portions as invalid. See, e.g., State Farm Mut. Auto. Ins. Co. v. Swearingen, 590 So. 2d 506 (Fla. 4th DCA 1991), rev. denied, 599 So. 2d 1280 (Fla. 1992) (Fourth District excised a three-year limitation on med pay coverage from the insurer's policy, while giving the rest of it effect, because the limitation conflicted with the No-Fault statute regarding med pay); State Farm Mut. Auto. Ins. Co. v. Chapman, 415 So. 2d 47 (Fla. 5th DCA 1982) (Court rejected policy language which excluded coverage for anyone injured while occupying a vehicle owned by a government entity because the No-Fault statute's definition of motor vehicle did not exclude such vehicles); Reeves v. Miller, 418 So. 2d 1050 (Fla. 5th DCA 1982) (Court declared an exclusion in motor vehicle policy for claims brought under the Federal Tort Claims Act as inoperative and invalid, because the statute requiring the insured to have motor vehicle liability coverage did not allow for exclusions of such actions); Mullis v. State Farm Mut. Auto. Ins. Co., 252 So. 2d 229 (Fla. 1971) (Court rejected provision of automobile liability policy which excluded uninsured motorist coverage because it was contrary to the uninsured motorist statute, and as such, ineffective). When unauthorized exclusions are contrary to public policy as established by a statute, they are deemed inapplicable, and the policy is enforced as if it were in express compliance

with the statutory requirements. Reeves, 418 So. 2d at 1050.

Perhaps most instructive to this court's analysis is the Third District's opinion in Fortune Ins. Co. v. Pacheco, 695 So. 2d 394 (Fla. 3rd DCA 1997), where the insurance company attempted to create its own definition of a term under the PIP statute, thereby avoiding the intent of the statute entirely. In Pacheco, the Third District considered the statutory definition of "reasonable proof of loss" under Section 627.736(4) in light of the insurance company's **own policy definition** of "reasonable proof." Fortune drafted a definition of "reasonable proof" to mean all supporting medical records. Id. at 395. As a result, the insurer unilaterally elongated the time period for payment of bills despite the 30-day time period the legislature prescribed. In rejecting the insurance company's position, the Third District wrote:

> Under Fortune's interpretation of its policy, **carriers would have the unilateral power** to determine when they could safely declare that they had received reasonable proof of loss, and then allow the 30-day period to begin running. That view would obliterate the 30-day period by allowing the insurer to determine when it began.

Id. at 396. (Emphasis added). Because the "No Fault" Act is not a "no pay" act, Florida courts will not let insurance companies get away with frustrating the precise purpose for which the legislature enacted the No-Fault Statute. See, Ivey v. Allstate at 683-684.

NAII advises this court that "the courthouse doors should not be open so an insured can pursue this illogical result [suing for the right to pay a higher co-payment amount]." (Amicus Brief, p. 10). The corollary to that argument is Allstate's recognition that its policy provision in fact closes the courthouse doors. Insurance contracts are ones of adhesion to begin with, leaving insureds in a position to "take it or leave it." Compare, Seaboard Fin. Co. v. Mutual Bankers Corp., 223 So. 2d 779, 782 (Fla. 1969)(addressing contracts of adhesion). The presence of this policy provision tramples on the insureds' rights by depriving them of their right to bring lawsuits, thereby impeding access to courts conferred by the Florida constitution in Article I, Section 21. Allstate's policy provision contravenes §627.736 and effectively moots lawsuits brought for the failure of an insurer to pay reasonable and necessary and related medical expenses.

Allstate's and NAII's claim that this policy provision will ebb the tide of baseless PIP litigation flooding our courts is disingenuous at best. The insurers seem to overlook the important fact that only meritorious litigants are rewarded with attorneys' fees pursuant to §627.736(8). There is simply no incentive for insureds to file frivolous claims. Instead of casting aspersions on insureds, "unscrupulous attorneys and healthcare providers," perhaps it would be more intellectually honest for Allstate and other insurers to look within, to see the number of random reductions and

refusals to pay legitimate medical bills dictated by their trusty computer programs entrusted to make such determinations. If the insurers would heed this court's admonishment in Ivey that the no fault scheme was meant to provide "swift and virtually automatic payment," then such prescriptions, and not unconscionable policy language, would prevent unnecessary litigation.

CONCLUSION

This court should affirm the First District's opinion in Kaklamanos, finding that Allstate's indemnity provision has no effect on insureds' rights to bring lawsuits under the PIP statute. It should further affirm the court's ruling that a blackened credit history and tainted doctor/patient relationship, among other things, are enough

to confer standing on an insured to bring a lawsuit despite Allstate's indemnity provision. Finally, this court should strike the policy provision as invalid.

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CERTIFICATE OF COMPLIANCE

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