IN THE SUPREME COURT OF FLORIDA

ALLSTATE INSURANCE COMPANY

Defendant/Petitioner,

vs. CASE NO. SC01-2444

DINO KAKLAMANOS and
KEELY KAKLAMANOS

Plaintiffs/Respondents.

ON REVIEW FROM THE DISTRICT COURT OF APPEAL, FIRST DISTRICT

DCA Case No.: 1D00-2974

ANSWER BRIEF OF PLAINTIFFS/RESPONDENTS DINO KAKLAMANOS and KEELY KAKLAMANOS

DAVID LEE SELLERS, ESQUIRE
801 North 12th Avenue
Pensacola, FL 32501
(850)434-3111
Florida Bar No.: 338281

ATTORNEY FOR
PLAINTIFFS/RESPONDENTS

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

Other Authority

STATEMENT OF THE CASE AND FACTS

Plaintiffs/Respondent, Keely Kaklamanos, sustained personal injuries as a result of a motor vehicle accident that occurred on February 17, 1998. She thereafter incurred medical and/or hospital-related expenses. At the time of the accident, Ms. Kaklamanos and her husband, Dino Kaklamanos, were covered by a

policy of insurance issued by Defendant/Petitioner, Allstate, including personal injury protection ("PIP") coverage required under Florida's Motor Vehicle No Fault Law.

Plaintiffs/Respondents subsequently filed a complaint for damages in the county court on April 7, 1999, after Defendant/Petitioner had failed and/or refused to make full payment of the Plaintiffs/Respondents reasonable and necessary medical-related expenses which were associated with injuries received by Ms. Kaklamanos in the accident. (Cert. App. at 51-53)[1] The specific medical bill at issue in this case and which Defendant/Petitioner refused to pay was in the amount of $650.00 from a medical provider by the name of Nu-Best Diagnostics ("NBD"). Plaintiffs/Respondents' suit for damages against Defendant/Petitioner for the specific medical bill owed NBD was brought pursuant to the provisions contained in Florida's Motor Vehicle No Fault Law, Sections 627.730-627.7405, Florida Statutes (1997), as well as pursuant to the medical payments provision of

---

[1] In this brief, "Cert. App. at __" refers to the referenced page in the appendix filed by the Kaklamanoses with their petition for writ of certiorari in the First District Court of Appeal. The petition for writ of certiorari itself is referred to as "Cert. at __." Allstate's appendix submitted in response to the petition for writ of certiorari is referred to as "Allstate App. at ___." Allstate's initial brief is referred to a "Pet. Allstate Brief at ___." The amicus brief of the National Association of Independent Insurers ("NAII") is referred to as "NAII Brief at ___."

Defendant/Petitioner policy of insurance which was supposed to provide coverage to the petitioners at the time of the accident.

At issue and of primary consideration in this case is the language contained in Defendant/Petitioner's contract of insurance with Plaintiffs/Respondents, and specifically, the indemnification clause which states as follows:

> **Unreasonable or Unnecessary Medical Expenses**
>
> If an insured person incurs medical expenses which **we** deem to be unreasonable or unnecessary, **we** may refuse to pay for those medical expenses and contest them.
>
> If the insured person is sued by a medical services provider because **we** refuse to pay medical expenses which **we** deem to be unreasonable or unnecessary, **we** will pay resulting defense costs and any resulting judgment against the insured person. **We** will choose the counsel. The insured person must cooperate with us in the defense of any claim or lawsuit. If **we** ask an insured person to attend hearings or trials, **we** will pay up to $50.00 per day for loss of wages or salary. **We** will also pay other reasonable expenses incurred at **our** request.

There is, of course, no dispute that Defendant/Petitioner refused to pay the bill to NBD, nor is there any dispute that Defendant/Petitioner advised the same medical provider that Defendant/Petitioner would indemnify and defend Plaintiffs/Respondents from any lawsuit brought by the provider to enforce the bill. Plaintiffs/Respondents admitted in their requests for admission that the same

provider had not filed suit against them for the medical bill nor had they paid the provider any portion of the same bill (Cert. App. at 21-23).

Defendant/Petitioner filed a motion for summary judgment, referring to the above-cited indemnification clause contained in its policy with Plaintiffs/Respondents as well as to the language contained in section 627.736(1), Florida Statutes, to bolster its argument that it was only required to pay personal injury protection benefits to the Plaintiffs/Respondents for medical treatment that was necessary, reasonable, and related to the injury which arose from use of a motor vehicle (Cert. App. at 48-50). In addition, Defendant/Petitioner relied on the same contractual language to reinforce the proposition that it (as opposed to the medical providers involved) was vested with authority to determine what constituted reasonable or necessary medical treatment (Cert. App. at 49). Defendant/Petitioner opined that the same indemnification clause protects insureds in the event he or she is sued by a medical provider; and, moreover, Defendant/Petitioner is available to pay the costs of defending such a suit and any resulting judgment should the Plaintiffs/Respondents be the focus of a lawsuit (Cert. App. at 50).

The trial court in considering the Defendant/Petitioner's motion for summary judgment in this case, found that Defendant/Petitioner had denied the payment of

certain medical bill(s) submitted by the medical provider on the grounds that the service rendered was not medically necessary to the treatment of the insured's accident-related injuries (Cert. App. at 44). The court further found that Plaintiffs/Respondents had avoided the indemnification and defense provisions of its insurance policy with Defendant/Petitioner; consequently, the Plaintiffs/Respondents did *not nor would it ever have in the future* any damages to pursue in the action (Cert. App. at 45). Defendant/Petitioner's motion for summary judgment was granted on February 1, 2000 (Cert. App. at 48-50).

Plaintiffs/Respondents thereafter appealed the trial court's order (Cert. App. at 2) which granted Defendant/Petitioner's motion for summary judgment (Cert. App. at 48-50) and appellate briefs were then submitted by both parties (Cert. App. at 3-16, 17-35, 36-43). The circuit court, acting in its appellate capacity, then affirmed the same (Cert. App. at 1).

Plaintiffs/Respondents then petitioned the First District Court of Appeal for a writ of certiorari (Cert. at 1). The petition was granted and the circuit court's opinion was quashed. The First District Court of Appeal found that the circuit court had applied the incorrect law that the Plaintiffs/Respondents had adequately alleged damages resulting from Defendant/Petitioner's failure to pay NBD's bill for

thirty days. Kaklamanos v. Allstate Insurance Company, 796 So.2d 555, 557-559 (Fla. 1st DCA 2001).

Defendant/Petitioner's motion for rehearing and motion for certification were each denied without opinion on October 5, 2001. On November 1, 2001, Defendant/Petitioner filed a notice to invoke the discretionary jurisdiction of this Court, arguing that the decision by the First District Court of Appeal expressly and directly conflicted with this Court's decision in Ivey v. Allstate Insurance Company, 774 So.2d 679, 683 (Fla. 2000), and the Second District Court of Appeal's decision in Caravakis v. Allstate Indemnity Company, 806 So.2d 548 (Fla. 2nd DCA 2001).

This Court entered an order on April 30, 2002, accepting jurisdiction in this matter, consolidating this case with Caravakis, setting a briefing schedule requiring Petitioners Allstate and Caravakis to submit merit briefs and scheduling oral argument. On June 13, 2002, Plaintiffs/Respondents filed a motion for extension of time requesting an additional ten days in which to file their answer brief. This Court entered an order granting Plaintiffs/Respondents an extension until July 8, 2002 in which to file the answer brief.

SUMMARY OF THE ARGUMENT

In granting the petition for the writ of certiorari and quashing the circuit court's decision, the First District Court of Appeal determined correctly that a clearly established principle of law has been violated. Benefits under the Florida PIP law are "due and payable as loss accrues upon receipt of reasonable proof...," § 627.736(4), Florida Statutes (2001), and "shall be overdue if not paid within thirty days after the insurer is furnished written notice...." § 627.736(4)(b), Florida Statutes (2001). If, after receipt of the insured's claim, thirty days elapse without payment of properly due benefits, the insurer has effectively breached the contract. State Farm Mutual Automobile Insurance Company v. Lee, 678 So.2d 818, 821 (Fla. 1996). Thus, it is a well established principle of law that an action arises against an insurer if, thirty days after receiving written notice of a claim, the claim has not been paid. Accordingly, Kaklamanos held that the indemnification did not prevent an insured from bringing suit against the insurer for a claim not paid within thirty days after submitting written notice of the claim. The insurer may defend on the grounds that the medical bills were not unreasonable or unnecessary.

The First District Court of Appeal was correct in holding that an insured who is entitled to medical benefits under Florida's Motor Vehicle No Fault Law, sections 627.730-627.7405, Florida Statutes, and who remains ultimately liable for

the payment of medical bills incurred as a result of covered events, may properly state a claim for damages under the authority of section 627.736, Florida Statutes. Losses are sustained and liability is incurred when an insured incurs medical expenses for PIP purposes, whether or not the bills have been paid. The insured is left with a debt and no recourse unless sued by the provider. If an insured is not allowed to challenge whether the medical expenses were properly denied as unreasonable and unnecessary, the insured is exposed to damages in the form of lawsuits, judgments and the subsequent harmful credit consequences.

An insurer may not avoid direct suit by an insured for unpaid PIP benefits by the inclusion of an indemnification clause in its policy of insurance. To preclude an insured from claiming damages by direct action against his or her insurer contravenes the Legislative intent for prompt payment under Florida's Motor Vehicle No Fault Law.

The First District Court of Appeal properly held that the policy is one of indemnification against liability rather than an indemnification against loss. An indemnity against loss requires payment by the indemnitee to enforce the indemnity. The indemnification provision of the Allstate policy does not require payment by the insured in order to invoke the provision. Instead, it provides protection in the form of representation and payment of costs and judgment, if necessary, in the

event the insured is sued. Therefore, the contract is one of indemnity against liability in which the indemnity is enforced upon the incurring of the liability.

To adopt the circuit court's decision allowing the indemnification provision to prohibit suits by insureds will open the floodgates for suits against insureds by providers. This will not only increase litigation, it is in direct contravention of the Legislative intent to provide prompt payment to insureds.

ARGUMENT

I. THE FIRST DISTRICT COURT OF APPEAL PROPERLY EXERCISED CERTIORARI REVIEW BASED ON THE CIRCUIT COURT'S APPLICATION OF THE INCORRECT LAW.

In granting writs of certiorari, the District Court of Appeal should look to the seriousness of the legal error more so than the mere existence of such error. Accordingly, the courts are given a large degree of discretion to decide each case individually. This discretion should only be exercised, however, when there is a "violation of a clearly established principle of law resulting in a miscarriage of justice." Combs v. State, 436 So.2d 93, 95-96 (Fla. 1983). A decision made according to the form of the law cannot be remedied by certiorari, even if it is erroneous in its conclusion as applied to the facts. The scope of certiorari review is "limited to whether the circuit court afforded procedural due process and whether it applied the correct law." Ivey v. Allstate Insurance Company, 774 So.2d 679, 682 (Fla. 2000), citing Haines City Community Development v. Heggs, 658 So.2d 523, 525, 528 (Fla.1995), and Combs v. State, 436 So.2d 93, 95 (Fla. 1983). Even though district courts are cautioned to be judicious and circumspect when accepting certiorari review, they are not to be "so wary as to deprive the litigants and the public of essential justice." Ivey, 774 So.2d at 682.

In the case at bar, the First District Court of Appeal addressed the issue of certiorari in accordance with this Court's holding in Ivey, supra. Recognizing that it could consider the question presented by the petition for writ of certiorari only if "'the circuit court's decision constituted a denial of procedural due process, application of incorrect law, or a miscarriage of justice,'" Kaklamanos, quoting Ivey, 796 So.2d at 557, the court determined that the circuit court had applied the incorrect law. Id.

Petitioner, Allstate, relies heavily upon the case of Ivey, supra, in which this Court held that the Third District Court of Appeal's mere disagreement with the circuit court's interpretation of the law was an improper basis for certiorari. The district court did not consider the fundamental requirements of certiorari jurisdiction of a denial of procedural due process, application of incorrect law or a miscarriage of justice. Rather, the district court based its certiorari jurisdiction on this quote from Fortune Insurance Company v. Everglades Diagnostics, Inc., 721 So.2d 384, 385 (Fla. 4th DCA 1998): "Given the pervasiveness of automobiles and PIP coverage in this state, we deem an *erroneous interpretation* of this law to be important enough for certiorari." Ivey, 744 So.2d at 683 (emphasis original). To the contrary, the First District Court of Appeal in Kaklamanos, supra, in discussing the standards required for certiorari jurisdictions went beyond consideration of a possible erroneous

interpretation of the law. Based on an examination of the record, the court determined that the circuit court applied the incorrect law. Thus, certiorari was warranted.

The principles of law that have been violated in the instant case are clearly stated and are derived from both statutory and judicial authorities. Benefits under the Florida PIP law are "due and payable as loss accrues upon receipt of reasonable proof...," § 627.736(4), Florida Statute (2001), and "shall be overdue if not paid within thirty days after the insurer is furnished written notice...." § 627.736(4)(b), Florida Statute. This language is clear and unambiguous and therefore not subject to judicial interpretation. Forsythe v. Longboat Key Beach Erosion Control District, 604 So.2d 452, 454 (Fla.1992). Thus, the insurance company has thirty days to verify a claim and that time period may not be tolled. Otherwise, it would render the "no-fault" insurance statute a "no-pay" plan. Dunmore v. Interstate Fire Insurance Company, 301 So.2d 502, 502 (Fla. 1st DCA 1974). If, after receipt of the insured's claim, thirty days elapse without payment of properly due benefits, the insurer has effectively breached the contract and the insured has suffered damages as a result of the breach. State Farm Mutual Automobile Insurance Company v. Lee, 678 So.2d 818, 821 (Fla. 1996). There is no established legal principle that requires an insured to be sued by a medical provider before filing suit against the insurer. Decker v. Allstate Property Casualty Insurance Company, 7 Fla. L. Weekly Supp. 145, 146 (17th Cir. Oct. 22, 1999). Hence, an

insured has a right of action under the PIP statute against the insurer for non-payment of PIP benefits. Nationwide Mutual Fire Insurance Company v. Pinnacle Medical, Inc., 753 So.2d 55 (Fla. 2000).

Petitioner, Allstate, cites Caravakis v. Allstate Indemnity Company, 806 So.2d 548 (Fla. 2nd DCA 2001), in which the PIP policy provided that the insurer could refuse to pay for "unreasonable or unnecessary" medical expenses. The policy also provided that should the insured be sued for any unpaid amount, the insurer would defend and indemnify the insured. Allstate, the insurer, paid only the amount of medical expenses that it deemed reasonable and necessary. The insured then sued, alleging that Allstate failed to pay PIP benefits that were due. The county court granted summary judgment and the circuit court affirmed, holding that the insured had suffered no damages until sued by the medical provider. The district court held that certiorari review was unavailable because there were no appellate cases repudiating the policy provision requiring that an injured person be sued by the medical provider before he can contest the reasonableness and necessity of medical expenses. See Stilson v. Allstate Insurance Company, 692 So.2d 979 (Fla. 2nd DCA 1997) (there was no controlling precedent discussing an object intentionally thrown at a moving car, there was no clearly established principle of law). There can be no violation of a principle that does not exist. *Id*.

The opinion in Kaklamanos plainly disputes Petitioner's, Allstate, contention that the First District Court of Appeal lacked authority to issue a writ of certiorari because there was no controlling precedent. The First District Court of Appeal applied the clear and unambiguous PIP statute and the cases in support of the statute to the facts of this case. In so doing, it correctly determined that the case was serious enough to result in a miscarriage of justice so as to engage certiorari review. Otherwise, the well established principle of law that an action arises against an insurer thirty days after being properly presenting a medical bill that it has refused to pay would be violated. Accordingly, Kaklamanos held that the indemnity provision does not prevent an insured from suing an insurer thirty days after properly presenting a medical bill that the insurer refuses to pay. This holding is based on a precedent that appears in case law and rulings by various Florida courts. See Dunmore, supra; Lee, supra; Pinnacle, supra. Accordingly, the Second District Court of Appeal in Caravakis was mistaken in its holding.

In Jones v. State, 459 So.2d 1068, 1081 (Fla. 2nd DCA 1984), the district court granted certiorari review. The State challenged the writ in a motion for rehearing on the basis that the circuit court's decision contained no "violation of a clearly established principle of law resulting in a miscarriage of justice," as set forth in Combs, supra. The State argued that due to the fact that the case was one of first impression in

Florida, and cases from other jurisdictions were split as to the issue, the circuit court's decision was not a violation of a clearly established principle of law. The Fourth District Court of Appeal disagreed, holding that although the factual issue of the constitutionality of DUI roadblocks was still developing, the *framework* of constitutional principles in the area of unreasonable search and seizures was well-established (emphasis added). Id. See also State v. Frazee, 617 So.2d 350 (Fla. 4th DCA 1993) (certiorari granted when trial court departed from precedential *constructions* of speedy trial rule (emphasis added)). Likewise, the First District Court of Appeal's holding in Kaklamanos, supra, is clearly within the framework of the established principle of law that the insurance contract in PIP cases is breached upon failure of the insurer to pay after thirty days notice that benefits are due.

Petitioner, Allstate, contends that the First District Court of Appeal's opinion in Kaklamanos, supra, is deficient in that it rejected two issues raised by Respondents, the Kaklamanoses, in their petition for certiorari. In the petition, Respondents, the Kaklamanoses, first claimed that the indemnity provision impeded their access to court. Second, they argued that indemnity provision was invalid because it was inconsistent with the no-fault automobile insurance law. The First District Court of Appeal did not "construe the policy as impeding access to the courts or otherwise inconsistent" with the PIP statute. Kaklamanos, 796 So.2d at 561, n.7. The court

determined that the language of the indemnity provision did not give any restrictions on the right of the insured to sue the insurer if benefits are not paid in a timely manner. Id. at 558. Recognizing that Petitioner, Allstate, cannot legally change its policy provisions to diminish the extent of its PIP coverage, the court determined that because the terms of the policy itself do not restrict the insurer's right to sue and, to that extent, do not diminish the extent of coverage, the policy is not inconsistent with the requirements of the No Fault Law. The court went on to discuss the purpose of the PIP statute to provide swift payment without "undue financial interruption" to the insured, Id. (citations omitted), and held that the circuit court's interpretation of the indemnity provision is a direct violation of the Legislative intent of the No Fault Law. The county and circuit court holdings that the indemnity provision prevents an insured from bringing suit against an insurer when the insured has suffered no out of pocket expenses makes it far more onerous than the statute allows. The language of the indemnity provision does not prohibit an insured from filing suit against an insured. It merely gives additional protection to the insured in the event a medical provider sues the insured.

The circuit court's interpretation of the indemnity provision not only restricts the insured's right to sue, but also violates both the express provisions and the Legislative intent of the PIP statute. Therefore, despite Petitioner's, Allstate, contention

that Respondents, the Kaklamanoses, did not raise the principle of law determined to be clearly established, that is exactly what they did. They claimed that the indemnity provision is inconsistent with the No Fault Law. The First District Court of Appeal determined that it is inconsistent when interpreted or applied in a manner that prohibits an insured from bringing suit thirty days after the insurer has failed to pay benefits that are due.

In a footnote, Petitioner, Allstate, also points to the fact that the circuit court opinion in Kaklamanos, supra, was a per curiam affirmance and argues that certiorari is inappropriate in the absence of a written opinion. While it is true that a per curiam appellate decision with no written opinion has no precedential value, Department of Legal Affairs v. District Court of Appeal, 5th District, 434 So.2d 310 (Fla. 1983), it is not precluded from certiorari review. Rich v. Fisher, 655 So.2d 1149 (Fla. 4th DCA 1995). See also Fortune Insurance Company v. Everglades Diagnostics, Inc., 721 So.2d 384 (Fla. 4th DCA 1998) (circuit court per curiam affirmed without opinion, district court of appeal granted certiorari); Kates v. Millheiser, 569 So.2d 1357 (Fla. 3rd DCA 1990) (circuit court per curiam reversed without opinion, district court of appeal granted certiorari).

II. THE CIRCUIT COURT ERRED IN AFFIRMING THE COUNTY COURT RULING THAT RESPONDENTS, THE KAKLAMANOSES, LACKED STANDING TO BRING SUIT AGAINST PETITIONER, ALLSTATE, FOR NONPAYMENT OF MEDICAL BILL.

A. The District Court Correctly Determined That Respondents' Standing To Bring Suit Against Petitioner, Allstate, Had Been Established.

Generally, one has standing when he or she has a sufficient interest at stake in the controversy which will be affected by the outcome of the litigation. Kumar Corporation v. Nopal Lines, Ltd., 462 So.2d 1178 (Fla. 3rd DCA 1985). The PIP statute confers to the insured a right of action upon the insurer's failure to pay benefits after thirty days notice of entitlement to said benefits. Hence, the First District Court of Appeal in Kaklamanos, held that the Kaklamanoses had adequately alleged damages as a result of Allstate's failure to pay the bill for thirty days. In Burgess v. Allstate Indemnity Company, 27 Fla. L. Weekly 816 (Fla. 2nd DCA, April 10 2002), noted by Petitioner, Allstate, (Pet. Allstate Brief p. 18, n. 3) the Second District Court Of Appeal agreed with the holding in Kaklamanos that despite Allstate's claim that the insureds lacked standing to sue based on the indemnity provision, nothing in the provision restricted this right. Id. at *2.

The First District Court of Appeal also looked to Jones v. Allstate Insurance Company, 7 Fla. L. Weekly Supp. 541 (Fla. Escambia Cty. Ct. Mar. 26, 2000), which

presented the same issue as the case at bar. In Jones, the county court held that the insurer's argument that no damages would be sustained as a result of non-payment did not consider the harmful consequences to an insured's credit history and the detriment to the insured's financial reputation of having a credit driven law suit filed against him.

Petitioner, Allstate, cites Florida county court and circuit court opinions which have held that plaintiffs in similar cases lacked standing because they suffered no injury. However, several circuit courts and a district court have held that plaintiffs have standing under the PIP statutes, as well as the insurance contracts, in cases such as these. See Burgess v. Allstate Indemnity Company, 27 Fla. L. Weekly 816 (Fla. 2nd DCA, April 10 2002); Jones v. Allstate Insurance Company, 7 Fla. L. Weekly Supp. 541 (Fla. Escambia Cty. Ct. Mar. 26, 2000); Andrews v. Allstate Insurance Company, 7 Fla. L. Weekly Supp. 613 (1st Cir. June 21, 2000); Decker, 7 Fla. L. Weekly Supp. at 146.

Petitioner, Allstate, also cites numerous cases from other jurisdictions for support of its claim that Respondents, the Kaklamanoses, have no standing in this particular fact situation. First, Petitioner cites Gloria v. Allstate County Mutual Insurance Company, No. SA-99-CA-676-PM (W.D. Tex. Sept. 29, 2000), in which the plaintiffs alleged that defendant's practice of reducing medical payments amounted to a breach of contract, violation of the Racketeering Influenced and Corrupt

Organizations Act (" RICO"), 18 U.S.C. § 1961, et seq., violation of the Sherman Anti-Trust Act, 15 U.S.C. §§1, 13, violation of the Texas Insurance Code Article 21.21, and the Texas Deceptive Practices Act ("DTPA"). The court held that because the plaintiffs failed to allege injury-in-fact, they did not have standing to bring either a RICO claim, which requires an injury to business or property, or an anti-trust claim. Since the plaintiffs did not qualify to bring their claims in federal court, the court lacked jurisdiction to consider the federal claims and, likewise, did not have supplemental jurisdiction to consider the state claims. Accordingly, the state claims were dismissed without prejudice to allow the plaintiffs to file in state court. Another Texas case cited by Petitioner, Allstate, is Noah v. Government Employees Insurance Company, No. SA-00-CA-018 (W.D. Tex. Apr. 9, 2001), in which the plaintiffs claimed injury-in-fact due to their payment of a bill incurred as a result of the insurer's fraudulent payment reductions. The court held that since the bill was not paid at the time the lawsuit was filed, the asserted injury took place after the action commenced and, therefore, there was no standing at the time the suit was filed.

In Florida, the doctrine of standing is not in the rigid sense employed in the federal system. Department of Revenue v. Kuhnlein, 646 So.2d 717 (Fla. 1994). Thus, federal standing cases are unpersuasive. Id. Furthermore, standing is not limited to potential economic losses. Kumar, supra. As pointed out in the case of Decker, 7 Fla.

L. Weekly Supp. at 146, Florida law does not require an insured to be sued by a medical provider prior to filing suit against the insurer. Therefore, notwithstanding the indemnity provision, an insured who could be liable for the balance of a bill, states a claim for damages under § 627.736, Florida Statutes, and the insurance contract. Id. In the case at bar, there are no federal claims and Respondents, the Kaklamanoses, had standing to file their claims in state court because they suffered damages resulting from Petitioner's, Allstate, failure to pay the claim. Kaklamanos, 796 So.2d at 561; Burgess, 27 Fla. L. Weekly at 816.

Petitioner, Allstate, next cites McGill v. State Farm Mutual Auto. Ins. Co., 207 Mich. App. 402, 526 N.W.2d 12, 13 (1994), which held that the plaintiffs suffered no actual or threatened injury as a result of defendants' partial payment of their medical bills. Petitioner, Allstate, argues that McGill is on point because it shows that the insurance bulletin is not inconsistent with the Michigan PIP statute, which is similar to the Florida PIP statute, and, because it completely protects the insured from injury, there is no standing to sue. But if the Michigan statute completely protected the insured from injury, there would be no need for the statement issued by the Michigan insurance commissioner. Further, the statement in the Michigan case is much more all-encompassing that the indemnity provision in the present case in that it requires that

insurers provide "complete protection from economic loss."[2] In the case at bar, there is nothing in the indemnity provision nor any other part of the policy which protects the insured against harassment of creditors or a disparagement of their credit rating. The only thing the disputed indemnity provision does is, in the event an insured is sued by the creditor, provide them counsel, pay lawsuit expenses and any resulting judgment against the insured. But before an insured can get even that protection, they must first suffer through harassment by creditors and potential ruined credit ratings.

The Kaklamanos decision distinguished the McGill case on the grounds that the insurer had paid amounts they considered reasonable and, also, insurers had been directed by the insurance commissioner to protect claimants from "economic loss including any exposure to 'harassment, dunning, disparagement of credit, or lawsuit as a result of a dispute between the health care provider and the insurer.'" Kaklamanos, 796 So.2d at 559, n. 6. In the instant case, claimants have no such protection.

Petitioner, Allstate, cites another Michigan case in which it was held that an insured lacked standing to bring suit when an insurer had refused to pay the full amount of allegedly unreasonable medical bills. Lamothe v. Auto Club Insurance

[2] "Auto insurers must act at all times to assure that the insured or claimant is not exposed to harassment, dunning, disparagement of credit, or lawsuit as a result of a dispute between the health care provider and the insurer." McGill, 526 N.W.2d at 407, n.1.

Association, 214 Mich. App. 577, 543 N.W.2d 42 (1995). However, in this case, which relies on McGill, the insurance company sent the plaintiff a letter explaining that partial payment had been made and that any balances were not the responsibility of the plaintiff. Should a suit be brought for the unpaid balance, not only would they defend and indemnify the plaintiff, they would "waive any technical defects and allow the provider to sue the [insurance company] directly so that [plaintiff] won't even have to be a party to the litigation." Contrast this to the indemnity provision in the instant case, which states that Petitioner, Allstate, will pay "any resulting judgment against the insured person." Petitioner, Allstate, may pay the costs of the judgment, but the judgment is still in the insured's name, resulting in a tarnished credit history.

The Lamothe court also noted, in response to the dissent's argument that the promise to defend and indemnify was an unenforceable promise, that should the insurer renege on this promise, the plaintiff could enforce it through judicial estoppel or promissory estoppel. However, this approach only guarantees one thing: more litigation expense for an insured. This, without doubt, is directly contrary to the policy and purpose of the Florida No Fault Law to allow the insured to get on with life without undue financial interruption. Government Employees Insurance Company v. Gonzalez, 512 So.2d 269, 271 (Fla. 3rd DCA 1987).

Next, Petitioner, Allstate, cites a Massachusetts case that found McGill and Lamothe persuasive. In Ny v. Metropolitan Property & Casualty Insurance Company, 1998 WL 603138 (Mass. App. Ct. Sept. 2, 1998), the court held that when an insurer has determined and paid reasonable medical expenses and made a binding statement of indemnification, the insured is not an "unpaid party" entitled to bring suit for the balance of the bill. Petitioner, Allstate, argues that the court emphasized that the insured could not be injured because he could not have suffered any damages due to the indemnification promise. The insurer in Ny paid a majority of the medical bills in full, but reduced payment as to some of the bills. The insurer promised to indemnify the insured in the event the provider disputed the reduction of payment or attempted to collect the balance. Neither action was taken by the provider. The insured sued to recover benefits. After the first set of cross-motions for summary judgment were filed, the providers agreed to accept the payments made by the insurer as payments in full. Summary judgment was entered in favor of the insurer. On appeal, the court chose not to address the insurer's argument that, under McGill, supra, and LaMothe, supra, the insureds lacked standing because they had no damages. Rather the court chose to address whether under Massachusetts law, the insured was an "unpaid party" entitled to seek damages and attorney's fees.[3] The court then held that a provider who

[3] The statute in question reads in part: "In any case where benefits due and payable remain unpaid for more than thirty days, any unpaid party shall be deemed a party to a contract with the insurer responsible for payment and shall therefore have a

has not received full payment is an "unpaid party" under the statute. But where reasonable expenses have been paid and there is a binding undertaking to defend and indemnify the insured, then the insured is not an "unpaid party" and cannot sue for the balance of unpaid amount. Ny, 1998 WL 603138 at*2-3. Even though Petitioner, Allstate, argues that the Ny court stressed the fact that the insured was not damaged due to the indemnification promise, that holding was based on the fact that reasonable expenses had been paid. As the Kaklamanos court pointed out in distinguishing the case, the defendant later obtained releases from the medical providers that they agreed to accept as full payment the amount already received from the defendant. There was no such payment and release in the Kaklamanos case.

The above cases were considered by the court in Andrews v. Allstate Insurance Company, 7 Fla. L. Weekly Supp. 613 (1st Cir. June 21, 2000), a case identical to the case at bar. The plaintiff in Andrews submitted a bill for medical services arising out of an automobile accident. Allstate, the insurer, refused to pay on the grounds that the expense was unreasonable, unnecessary and unrelated to the injury. Although Allstate did agree to indemnify, defend and hold harmless the plaintiff from any lawsuit brought for enforcement of the unpaid bill. The plaintiff then filed suit against Allstate who, in turn, filed a motion for summary judgment. The motion alleged that Allstate had

right to commence an action in contract for payment of amounts therein determined to be due in accordance with the provisions of this chapter." Mass. Gen. Laws. Ann. ch. 90, § 34M.

exercised its right under the contract to determine the expenses unreasonable or unnecessary, that the plaintiff had not suffered damages because she had not been sued by the provider and that the indemnity provision of the policy was enforceable. In support of the motion for summary judgment, Allstate cited McGill, supra, Lamothe, supra, and Ny, supra. The court determined that there was no such regulation as in McGill and Lamothe providing the insured protection, nor is there a release as in Ny. The court held that the indemnity provision was not unqualified because it indicates that no further defense costs would be paid once the amount of coverage has been reached. Therefore the theory of McGill and its progeny did not apply.

In a Missouri case cited by Petitioner, Allstate, the plaintiff brought an action claiming that the insured, Allstate, denied full payment of medical bills under the medical payment provision of its policies. The plaintiff claimed to have suffered damages in the amount of $13.00 when the defendant refused to pay the full amount of the bill. The court dismissed the complaint because the plaintiff had failed to state how his submission of damages to the defendant and the defendant's subsequent refusal to pay in full, gave rise to damages of $13.00. "The mere conclusion that Bush had damages of $13.00 does not show how that sum relates in any way to Allstate's alleged actions." Thus, the breach of contract claim was dismissed for failure to state

a claim. Kinnard v. Allstate Insurance Company, No. 992-00812 (Mo. Cir. Ct. Nov. 15, 1999). Respondents, the Kaklamanoses, fail to see how Kinnard relates to the case at bar, in which the First District Court of Appeal specifically held that Petitioners "adequately alleged that they sustained damages" as a result of Allstate's failure to pay. Kaklamanos, 796 So.2d at 559. Despite the existence of the indemnity provision, an insured who could be liable for the balance of a bill, states a claim for damages. Decker, 7 Fla. L. Weekly Supp. at 146.

Petitioner, Allstate, also cites Ostrof v. State Farm Mutual Automobile Insurance Company, 200 F.R.D. 521 (D. Md. 2001), which relies on McGill to hold that a plaintiff was not a member of a class because he did not have pay outstanding medical bills and therefore suffered no injuries. As discussed above, McGill and its progeny are dissimilar to the case at bar. Moreover, Kaklamanos is not a class action suit.[4]

[4] Petitioner, Allstate, attempts to make an analogy between the Texas and Maryland PIP statutes and the Florida PIP statutes. All of these statutes require that benefits be paid thirty days after satisfactory proof that payment is warranted. Md. Ins. Code §19-508; Tex. Ins. Code art. 5.06-3(d); § 627.736(4)(b), Fla. Stat. However, Petitioner, Allstate, argues that because the Gloria, Noah, and Ostrof, cases based on the out-of-state statutes were dismissed for failure to allege actual injury, the instant case should be dismissed for the same reason. But, this argument fails for the reasons previously discussed. The federal court in Gloria and Noah did not address the state statutes and the Ostrof case, a class action, held that the plaintiff did not meet the class requirements. The Kaklamanos case is neither a federal case nor a class action.

B. The District Court Properly Interpreted and Applied Florida Cases Interpreting the No Fault Law.

Petitioner, Allstate, asserts that the Florida cases interpreting the PIP statute, upon which the First District Court of Appeal based its holding, do not support the ruling. First, Petitioner, Allstate, claims that the First District Court of Appeal improperly relied upon State Farm Mutual Automobile Insurance Company v. Lee, 678 So.2d 818 (Fla. 1996), in determining that Respondents, the Kaklamanoses, adequately alleged that they had sustained damages as a result of Allstate's failure to pay NBD's bill. Lee holds that once thirty days have elapsed after receipt of the insured's claim and no benefits have been paid, assuming that they were properly due, the insurer has breached the contract.

Petitioner, Allstate, argues that Lee does not means that insurers are relieved of their burden of showing actual injury before they may sue. The Kaklamanos court cites Lee for the principle that the complaint complied with the statutory conditions precedent for filing the action because thirty days had elapsed with no benefits paid, and, therefore, the contract had effectively been breached. At that time, the insureds had a right of action against the insurer. No where in the statute does it require that an actual injury be shown before an insured can bring suit against the insurer. As the First District Court of Appeal explained in Kaklamanos, an insured who does not assign

benefits to providers may not be able to pay medical bills without first receiving PIP or medpay benefits. Id. at 560. As such, an insured may be damaged by the insurer's failure to pay, even if the insured has not paid the bill or been sued by the medical provider. Id. at 561.

The Kaklamanos court recognized State Farm Mutual Automobile Insurance Company v. Jones, 789 So.2d 504 (Fla. 1st DCA 2001), and the line of cases holding that the insurers right to defend unreasonable or unnecessary bills does not lapse after thirty days. The insured can sue the insurer if no benefits have been paid within thirty days after written notice that benefits are due. But the insurer can still defend on the grounds that the medical bills were not unreasonable or unnecessary. If the court finds that the expenses were unreasonable or unnecessary, then the benefits were not properly due and no breach occurred. However, the insured must bring suit for that determination to be made. Lee holds that the contract is breached when benefits properly due are not paid within thirty days. It does not say that the insurance company cannot defend such a breach of contract action.

As the First District Court of Appeal points out in Kaklamanos, the only exception to the thirty day payment rule is when the insurer has reasonable proof that it is not responsible, such as when the treatment is not related to the accident. Pacheco, supra. Thus, if the insured deems the expenses unreasonable or unnecessary

and does not pay within the thirty day period, it has breached the contract. It can still defend on the ground that the expense was unreasonable or unnecessary, but it has still breached. No where in the Kaklamanos opinion does the First District Court of Appeal state that the insurer *must* pay the bills in question. It only states that if the bills are not paid within thirty days, the insured has the right to bring suit against the insurer, regardless of the indemnity provision. The insurer can still raise the defense that the medical expenses were unreasonable or unnecessary.

In the case of Rader v. Allstate Insurance Company, 789 So.2d 1045 (Fla. 4th DCA 2001), the insurer brought an action alleging anticipatory repudiation after being informed that the insurer would no longer pay her medical bills because further treatment was unnecessary. The district court affirmed the circuit court's holding that in absence of the allegation of actual unreimbursed medical expenses, the insured failed to state a claim of an anticipatory breach . Id. at 1046-48. The dissenting opinion asserted that the insured had standing even in the absence of unpaid medical bills. Id at 1048-1051. In distinguishing the case from Kaklamanos, the First District Court of Appeal stated that nothing in either the majority or dissenting opinions supported the argument that an insured cannot sue for PIP benefits thirty days after insurer has refused to pay a properly submitted medical bill.

Petitioner, Allstate argues that the Rader case conforms with their position that Respondents, the Kaklamanoses, must allege and show actual injury to have standing to sue. However, in Rader, the court held that the petitioner failed to plead damages because she did not allege that she had incurred medical bills that the insurer denied or refused to pay. Id. at 1047. This is directly contrary to the instant case in which Respondents, the Kaklamanoses, specifically alleged that they incurred medical expenses which Petitioner, Allstate, refused to pay. There being an allegation of unpaid medical bills, damages were properly pleaded. The First District Court of Appeal recognized this when it held that the Kaklamanoses had adequately alleged damages as a result of Petitioner's, Allstate, failure to pay a medical bill for thirty days. Kaklamanos, 796 So.2d at 559. As held in Decker, supra, an insured who could be liable for the balance of a bill, states a claim. Id. 7 Fla. L. Weekly Supp. at 146.

Further, Rader concerns an anticipatory breach. Petitioner, Allstate, argues in its brief that the First District Court of Appeal relies on Rader to hold that its conduct could be deemed an anticipatory breach because it did not pay a portion of the claim within thirty days. However, the First District Court of Appeal specifically held that the contract was breached when Petitioner, Allstate, did not pay the bill within thirty days; not that the breach was anticipatory, but that it had already happened.

Petitioner, Allstate, also argues that it has not breached its contractual

obligations and cannot be deemed to have anticipatorily repudiated its duties because it has never refused or said that it would refuse to indemnify Respondents, the Kaklamanoses. According to Petitioner, Allstate, because it has not breached its contractual obligations under the indemnity clause, it has not anticipatorily repudiated its duties under the policy. However, the issue of this case is not that Petitioner, Allstate, has acted contrary to the indemnity provision, but that the circuit court erred in enforcing the provision in such a way that it prevents insureds from filing suit against the insurer when benefits have been denied. Thereby violating a clearly established principle of law. The circuit court and the county court interpreted the indemnity provision as prohibiting an insured from filing suit when benefits are denied as unreasonable or unnecessary. There is nothing in the indemnity provision that prevents an insured from bringing a claim directly against Petitioner, Allstate, for medical expenses reduced or denied, regardless of whether the provider has sued the insured.

Petitioner, Allstate, also argues that because the Kaklamanos opinion essentially holds that a party without injury has standing to sue, the effect will allow insureds to sue insurers for unpaid amounts, even if the provider accepts the insurer's payment as reasonable. This is far-fetched. If the provider accepts a payment as reasonable, or payment in full, then the provider will not likely pursue the insured for any unpaid amount. There is little danger of judgments against the insured for unpaid bills in that

situation. Moreover, the fact that the provider in Ny, supra, had accepted an insurer's partial payment as payment in full is the reason the First District Court of Appeal distinguished the case from Kaklamanos.

Petitioner, Allstate, claims that Florida law allows contracting parties to specify reasonable limits on contractual remedies and, therefore, the chosen remedies should be enforced. Teres Trailer Corporation v. McIlwain, 579 So.2d 237, 243 (Fla. 1st DCA 1991). However, if an insurance policy contains conditions or provisions not in compliance with the requirements of the insurance code, they will be construed and applied as they would have been if they had been in full compliance with the code. § 627.418(1), Fla. Stat. (2001).[5] Thus, invalid insurance policy provisions in uninsured or underinsured motorist policies have been stricken or rendered void. Mullis v. State Farm Mutual Automobile Insurance Company, 252 So.2d 229 (Fla. 1971), New Hampshire Insurance Company v. Knight, 506 So.2d 75 (Fla. 5th DCA 1987), Auto Owners Insurance Company v. DeJohn, 640 So.2d 158 (Fla. 5th DCA 1994). Petitioner, Allstate, is attempting to use the indemnity provision to circumvent the

[5] Any insurance policy, rider, or endorsement otherwise valid which contains any condition or provision not in compliance with the requirements of this code shall not be thereby rendered invalid, except as provided in s. 627.415, but shall be construed and applied in accordance with such conditions and provisions as would have applied had such policy, rider, or endorsement been in full compliance with this code.
Florida Statute 627.418(1) (2001).

statutory authorization to bring a cause of action after thirty days have elapsed without payment of the claim. If a policy provision is found to be contrary to the purpose of the insurance statute, it does not void the entire coverage of the policy. Flores v. Allstate, 27 Fla. L. Weekly 499 (May 24, 2002).

In regard to PIP policies, Florida courts have consistently held that insurance companies cannot impose requirements in their automobile insurance policies which do not comply with Florida law and which are more onerous than those specified in PIP statutes. Dunmore, supra; Pacheco, supra. An insurance policy imposing conditions or restrictions other than those required by statute will be enforced as if it were in compliance with the statute, irrespective of the contract's actual terms. § 627.233(3)(a), Florida Statutes (2001); Lewis v. Allstate Insurance Company, 425 So.2d 100 (Fla. 1st DCA 1983) (the insurance contract excluded coverages for injuries sustained in vehicles for hire would be enforced as in compliance with the Automobile Reparations Reform Act and PIP benefits would be paid).

The constitutionality of the PIP statute was upheld because, in exchange for the loss of the right to recover for pain and suffering in cases where the statutory threshold is not met, the injured party is "assured a speedy payment of his medical bills and compensation for lost income from his own insurer, even when the injured party himself was at fault," Lasky v. State Farm Insurance Company, 296 So.2d 9 (Fla.

1974). Thus, the purpose of the PIP statute is to provide the injured party with "swift and virtually automatic payment so that the injured insured may get on with his life without undue financial interruption." Gonzalez, 512 So.2d at 271.

To allow the insurer to refuse to pay based on the claim that the insured has suffered no damages, allows the requirements of the PIP statutes to be circumvented by including an indemnity in the policy. The insurer would have no incentive to pay since they would not be subject to suit by the insured unless the provider has sued. Decker, 7 Fla. L. Weekly Supp. at 146. Legislative intent is "the polestar that guides a court's inquiry under the Florida No Fault Law." United Automobile Insurance Company v. Rodriguez, 808 So.2d 82 (Fla. 2002). The circuit court's interpretation of the indemnity provision clearly violates the Legislative intent of the PIP statute, which is to insure prompt payment of PIP claims. Pinnacle, supra.

C. The District Court Properly Held that Petitioner's, Allstate, Policy Is One Of Indemnification Against Liability.

The First District Court of Appeal held that the policy was a contract of indemnity against liability, which entitles an insured to sue upon receiving reasonable and necessary medical treatment that resulted in a debt, rather than a contract of indemnity against loss. Petitioner, Allstate, disagrees, emphasizing a quote from Gaines

v. MacArthur, 254 So.2d 8, 10 (Fla. 3rd DCA 1971), that "unless it clearly appears otherwise the contract will held to be against loss." However, the term "loss" generally applies to actual payment by the indemnitee. Michel v. American Fire & Casualty Company, 82 F.2d 583, 586 (5th Cir. 1936). When the indemnity is against liability the indemnitee is entitled to enforce the indemnity upon the incurring of the liability. Thus, the insurer's liability becomes fixed when liability attaches to the insured. Allstate Insurance Company v. Warren, 125 So.2d 886 (Fla. 3rd DCA 1961).

In the case at bar, the language of the indemnity provision clearly states that Petitioner, Allstate, will pay "resulting defense costs and any resulting judgment against the insured person" should that person be sued by a medical provider for expenses Petitioner, Allstate, refused to pay which it deemed unreasonable and unnecessary. Clearly, the contract is one of indemnity against liability. Burgess, supra. But, if there is any doubt, it should be resolved in favor of indemnification against liability, since it is the insurer that chose the terms of the policy. Michel, 82 F.2d at 586-587. The rule is well established that the interpretation which gives the greater indemnity prevails. Elliott v. Belt Automobile Association, 100 So. 797 (Fla. 1924).

Petitioner, Allstate, argues that even if it is a policy of indemnity, there still must be an injury. But losses are sustained and liability is incurred when an insured incurs medical expenses for PIP purposes, whether or not the bills have been paid.

Kaklamanos, 796 So.2d at 560. Burgess, 27 Fla. L. Weekly at 816. "The right of action springs into existence with the accrual of liability and the failure to discharge it." Kaklamanos, 796 So.2d at 561, quoting Gaines, supra, (quoting Case Comment, 24 Calif. L. Rev. 193 (1936)).

D. The Kaklamanos decision will not lead to a proliferation of groundless suits by insureds against insurers, but will increase suits by medical providers against insureds.

Petitioner, Allstate, contends that if the Kaklamanos decision is allowed to stand, it could lead to a "proliferation of groundless suits" because it removes the standing requirement for access to court. To the contrary, the circuit court's decision of prohibiting suits by insureds will, in effect, turn the "prompt payment" policy of the No Fault Law into a nullity while opening the floodgates for suits by providers against insureds. The foundation of the legislative scheme is to provide swift and virtually automatic payment so that the injured insured may get on with his life without undue financial interruption. Gonzalez, 512 So.2d at 269 (Fla. 3rd DCA 1987). To expose insureds to suit by providers would not only run contrary to the statutory policy of prompt payment, it would also increase litigation. Nor is there any language in the indemnity provision prohibiting an insured from filing suit after thirty days of nonpayment of a claim.

Petitioner, Allstate, and the amicus brief of the National Association of Independent Insurers ("NAII") point to the Second Interim Report of the Fifteenth Statewide Grand Jury, Florida Supreme Court Case No. 95,746 (Pet. Allstate Brief at 32-33; NAII Brief at 5). This report discusses an investigation regarding PIP fraud resulting from "greedy and unscrupulous legal and medical professionals..." See Second Grand Jury Report at p. 2. Petitioner, Allstate, and Amicus NAII use this report to argue that the Kaklamanos decision will exacerbate the PIP fraud crisis by allowing an insured who has suffered no damages to file an unnecessary suit against an insurer. Although there is nothing in the PIP statute that requires an insured to prove actual damages before bringing suit against the insured for failure to pay a claim, an insured whose benefits have been denied or reduced by the insurer has suffered damages. The insured has incurred a debt that is owed. The insured's insurance may cover the debt. But the insurer refuses to pay the debt, instead claiming that the expense incurred is unreasonable and unnecessary. At the same time, the insurer claims that the insured cannot sue to enforce the policy due to the indemnity provision. The insured is left with a debt and no recourse unless sued by the provider. In that scenario, the debt may be paid if a judgment is rendered against the insured, but the insured is left with a damaged credit history.

NAII contends that the only incentive for an insured to file suit before being

sued by the medical provider is to provide a windfall to the insured in the form of damages for expenses not yet incurred or to provide a recovery of fees to an attorney. This is ludicrous. The reason for filing the suit is to have the court determine whether the claim has been denied properly. If a court of law determines that the expenses are not unreasonable and unnecessary, then the insurer must pay the claim. Without this determination, the insured is exposed to damages in the form of lawsuits, judgments and the subsequent harmful credit consequences. If the insured is not allowed to challenge the insurer's denial of payment, then the insurer is given the authority to unilaterally determine what is "reasonable and necessary." This stymies medical providers efforts to make professional decisions on behalf of their patients, as well as denies payments to which insureds may rightfully be entitled.

NAII also claims that if the insurer determines that the reasonable amount of the bill is less than the amount originally billed, the insured will have a lower co-payment. Thus, Amicus NAII argues that an insured challenging the reduction or denial of a medical expense is essentially arguing for an increased co-payment amount. But an increased co-payment would be less than having to pay the entire bill or, possibly, the balance amount.

According to NAII, there is no reason for insureds to bring suit challenging the denial of an unreasonable and unnecessary medical expense because the medical

providers, as third party beneficiaries have the right to litigate this issue. But, as pointed out in Kaklamanos, an insured's claim for PIP benefits "is a first party claim in contract for failure to pay the contractual obligation for personal injuries sustained, regardless of fault." Kaklamanos, 796 So.2d at 559, citing Levy v. Travelers Insurance Company, 580 So.2d 190, 191 (Fla. 4th DCA 1991). Therefore, the insured has every right to challenge the denial of a PIP or medpay benefit.

NAII's argument that if a medical provider does not contest the denial or reduction of a medical bill it is because the provider agrees that said denial or reduction was appropriate, is highly improbable. First, medical providers are prohibited by law to charge more than reasonable fees for PIP cases.§ 627.736(5), Fla. Stat. (2001). Second, if insureds are not allowed to challenge an insurer's denial of an expense as unreasonable and unnecessary, this may encourage medical providers to require insured to pay at the time of service. This alternative would be more feasible and appealing that

suing the insured, being confronted with insurance defense attorneys, and the potential costs and fees associated with litigation or proposals for settlement. Also, having to pay for medical services up-front, creates more damages for the insured.

To grant Amicus NAII's plea to quash the decision in Kaklamanos and hold that only those insureds who have been damaged by an insurer's denial or reduction of

payment for medical expenses have standing to file suit against an insurer for such payments would require a ruling in direct conflict of the express provisions of the PIP statute. The PIP statute requires that benefits properly due be paid with thirty day after receipt of written notice. To hold otherwise, this Court would have to find the statute unconstitutional. Something this Court has refused to do in the past. Lasky, supra.

CONCLUSION

For the foregoing reasons, Respondents, the Kaklamanoses, uphold the First District Court of Appeal's decision in Kaklamanos quashing the circuit court decision, and hold that insured's right of action against a PIP insurer arises thirty days after written notice to the insurer that medical treatment has resulted in a debt.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing was furnished to Charles F. Beall, Jr., Esq., Attorney for Petitioner, 220 West Garden Street, 9th Floor, Sun Trust Tower, Post Office Box 13290, Pensacola, FL 32591-3290; Peter J. Valeta, Esq., 150 North Michigan Avenue, Chicago, IL 60601-7567 David B. Shelton, Rumberger, Kirk & Caldwell, P.O. Box 1873, Orlando, Florida 32802-1873, and to Julie Littky-Rubin, 515 North Flagler Drive, West Palm Beach, FL 22401, by U.S. Mail on this the 5th day of July, 2002.

_____

DAVID LEE SELLERS, ESQUIRE
801 North 12th Avenue
Pensacola, FL 32501
(850)434-3111
Florida Bar No.: 338281
Attorney for Respondents

CERTIFICATE OF COMPLYING WITH FONT REQUIREMENTS

I HEREBY CERTIFY that the foregoing brief has been typed using the Times New Roman 14-point font, and therefore complies with the font requirements of Florida Rule of Appellate Procedure 9.210(a)(2).

_____

DAVID LEE SELLERS, ESQUIRE
801 North 12th Avenue
Pensacola, FL 32501
(850)434-3111
Florida Bar No.: 338281
Attorney for Respondents