IN THE SUPREME COURT OF FLORIDA

CASE NO. SC01-2444
Lower Tribunal No. 1D00-2974

CASE NO. SC02-198
Lower Tribunal No. 2D00-4027

ALLSTATE INSURANCE COMPANY,

Petitioner,

vs.

DINO KAKLAMANOS, ET AL.,

Respondent.

VERON CARAVAKIS,

Petitioner,

vs.

ALLSTATE INDEMNITY COMPANY, ETC.,

Respondent.

INITIAL BRIEF OF PETITIONER, VERON CARAVAKIS

On Discretionary Review from a Decision
of the District Court of Appeal
Second District of Florida

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STATEMENT OF THE CASE AND FACTS

Petitioner, VERON CARAVAKIS, suffered injuries in a motor vehicle collision that occurred May 28, 1998. (Circuit Court Record, hereinafter, "CC R", Page 2). At that time, Petitioner, CARAVAKIS, was insured by a policy of automobile insurance issued by Respondent, Allstate Indemnity Company. (CC R.2, 19-21; 37-95).

Petitioner, CARAVAKIS, sought the care of an orthopaedic surgeon, Dr. Marc Richman, as a result of the injuries suffered from the motor vehicle collision. Petitioner, CARAVAKIS, received medical care and treatment from Dr. Richman. The bills from Dr. Richman's office were properly submitted to Respondent, Allstate, in a timely manner. Respondent, Allstate, received the bills, in a timely manner. Respondent, Allstate, received Petitioner's "no-fault" PIP application, in a timely manner. (CC R. 2; 5; 19-21; 22-36).

Thereafter, Respondent, Allstate, unilaterally reduced the amount of the bills and denied payment entirely for at least one treatment with Dr. Richman's office. Respondent, Allstate, did this without the benefit of any independent medical examiner and/or peer review medical expert reviewing the treatment and bills. (CC R. 19-21; 22-36).

This instant PIP action was filed in County Court on June 8, 1999. The complaint alleged that Respondent, Allstate, breached its contractual duty by failing to pay benefits due within the

statutory thirty (30) days. (CC R. 1-4). On June 18, 1999, Respondent, Allstate, filed its Answer and Defenses. (CC R. 5-8). On October 21, 1999, Respondent, Allstate, filed a Motion for Summary Judgment indicating that the bills at issue had been denied or reduced. (CC R. 96-98). The motion also indicated that Petitioner, CARAVAKIS, had not been sued by the health care provider at issue and, accordingly, lacked standing and could not bring an action against Respondent, Allstate. Respondent, Allstate, based its position upon the following language in Respondent's policy:

> **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 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 to attend hearing or trails [sic], **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.

(CC R. 59).(emphasis in original)

The county court granted Respondent, Allstate's, Motion for

Summary Judgment on November 29, 1999. (CC R. 99).

On appeal to the Circuit Court for the Sixth Judicial Circuit in and for Pinellas County, Florida, Circuit Court Judge Charles Cope affirmed, holding that Petitioner, CARAVAKIS, "did not suffer any damages, therefore was missing a critical element to bring a breach of contract action." (District Court of Appeal Record, hereinafter, "DCA R", DCA R. 103-106).

Thereafter, Petitioner, CARAVAKIS, petitioned for a Writ of Certiorari from the Second District Court of Appeal. (DCAR. 1-10). The Second District Court of Appeal denied the petition indicating that Petitioner, CARAVAKIS, had failed to establish the threshold requirements for certiorari relief. (DCA R. 377-379). Petitioner filed a Motion for Rehearing informing the Second District Court of Appeal of Petitioner's Supplemental Authority: Kaklamanos v. Allstate Insurance Company, 796 So.2d 555 (Fla. 1st DCA 2001). (DCA R. 381-386). On rehearing, the Second District Court of Appeal specifically noted Petitioner's Notice of Supplemental Authority citing Kaklamanos v. Allstate Insurance Company, 796 So.2d 555 (Fla. 1st DCA 2001), which granted certiorari relief under identical facts. Yet, the Second District continued to state that it believed it lacked certiorari jurisdiction. (DCA R.434-437).

Finally, Petitioner filed his Notice to Invoke Discretionary Jurisdiction with the Florida Supreme Court seeking this Court's jurisdiction on the basis of Caravakis v. Allstate Indemnity Co.,

806 So.2d 548 (Fla. 2nd DCA 2001) "expressly and directly conflicting" with Kaklamanos v. Allstate Insurance Co., 796 So.2d 555 (Fla. 1st DCA 2001). This Court accepted jurisdiction and consolidated Kaklamanos with Caravakis.

SUMMARY OF ARGUMENT

Under Florida appellate case law, certiorari review of a circuit court, acting in its appellate capacity, is proper when the circuit court either: (1) denies due process; or (2) fails to apply the correct law, resulting in a miscarriage of justice.

Under Florida PIP statutory law, PIP benefits are due and payable as losses accrue (as bills are incurred), upon receipt of reasonable proof of such loss and the amount of same (upon receipt of the bills). PIP benefits are overdue if not paid within thirty (30) days of receipt of a covered loss and the amount of same. A PIP insured is entitled to file a PIP action against his PIP insurer if his PIP insurer violates Florida PIP law or breaches the contract of automobile insurance, providing PIP coverage.

The Florida Constitution guarantees access to courts to every person for redress of any injury and the right of trial by jury to resolve a properly filed action, in this case, one involving a PIP dispute.

In the instant case, Petitioner, CARAVAKIS, was involved in a motor vehicle collision; suffered injuries; had PIP coverage in place; properly completed a PIP application; obtained medical care and treatment; incurred medical expenses; properly submitted his medical bills; and, yet, he still owes his physician a balance of expenses that were covered under his PIP policy, but not paid by Respondent, Allstate. (CC R. 2; 5; 19-21; 22-36; 37-95).

Circuit Court Judge Cope, acting in his appellate capacity, held as a matter of law that Petitioner, CARAVAKIS, "did not suffer any damages." (DCA R. 103-106).

Circuit Court Judge Cope failed to apply the correct law, departed from the essential requirements of law and caused a serious miscarriage of justice to Petitioner. Circuit Court Judge Cope failed to understand that an insured who incurs medical expenses on account of an automobile accident, sustains losses and, therefore, incurs liability to his treating physician. Circuit Court Judge Cope, further, failed to understand that an insured is damaged by an insurance company's failure to pay, even if the insured has not already paid the treating physician or been sued by the treating physician.

Circuit Court Judge Cope failed to understand that a medical bill (an expense) is the same as a debt and that the debt has been incurred when liability for payment attaches. Circuit Court Judge Cope failed to recognize that in truth, in law, and in fact, Petitioner, CARAVAKIS, "suffered damages" entitling him to file his PIP action.

The mere promise, contained in an automobile insurance policy, by Respondent, Allstate, to indemnify or defend Petitioner, CARAVAKIS, from a subsequent lawsuit by his physician does not in any way prohibit Petitioner, CARAVAKIS, from access to courts to resolve the legal and factual dispute that exists between

Petitioner, CARAVAKIS, and Respondent, Allstate, and does not in any way prohibit Petitioner's right of trial by jury to resolve the legal and factual dispute at issue: whether the medical bills properly submitted by Petitioner are reasonable, medically necessary, and causally related to the motor vehicle collision.

Florida PIP statutory law does not prevent Petitioner's PIP action. Florida PIP case law does not prevent Petitioner's PIP action. The Florida Constitution does not prevent Petitioner's PIP action. Florida contract law does not prevent Petitioner's PIP action. The express language of the Allstate insurance policy does not prevent Petitioner's PIP action. Finally, public policy does not prevent Petitioner's PIP action.

Yet, Circuit Court Judge Cope prevented Petitioner's PIP action by his ruling that Petitioner "did not suffer damages." Such a ruling failed to apply the correct law, departed from the essential requirements of law and caused a serious miscarriage of justice to Petitioner.

Petitioner, CARAVAKIS, is in a "class of one" and is without a remedy. Under Florida appellate law, every other litigant in The Second District Court of Appeal receives the benefits of the First District's opinion in Kaklamanos, because all county courts within the Second District's jurisdiction are obligated to follow other district court opinions on point when the Second District has not spoken on the issue. The only litigant in the State of Florida who

does not receive the benefit of the Kaklamanos opinion is the Petitioner, CARAVAKIS.

ARGUMENT I

CIRCUIT COURT JUDGE COPE IN CARAVAKIS DID NOT APPLY THE CORRECT LAW, DEPARTED FROM THE ESSENTIAL REQUIREMENTS OF LAW AND CAUSED A SERIOUS MISCARRIAGE OF JUSTICE WHEN HE HELD THAT PETITIONER "SUFFERED NO DAMAGES"

In the instant case (Caravakis), this Court must decide, initially, whether Circuit Court Judge Cope's decision in this case holding as a matter of law that Petitioner, CARAVAKIS, suffered no damages falls within the "limited scope of common law certiorari jurisdiction." In other words, does Circuit Court Judge Cope's decision, in his appellate capacity, holding that Petitioner, CARAVAKIS, has suffered no damages, constitute either: (1) a denial of procedural due process; or (2) result in the application of incorrect law, which causes a miscarriage of justice. Ivey v. Allstate Insurance Co., 774 So.2d 679, 683 (Fla. 2000).

Any fair and reasonable examination of the very limited record in the instant case, clearly results in the conclusion that Circuit Court Judge Cope, in his appellate capacity, failed to apply the correct law in this case and that his failure to apply the correct law resulted in a serious miscarriage of justice to Petitioner, CARAVAKIS.

B. A History of Common Law Writ of Certiorari

The history and development of common law certiorari jurisdiction in Florida is best summarized in the case of Haines City Community Development v. Heggs, 658 So.2d 523 (Fla. 1995). The Heggs case gives us a clear understanding of the gradual narrowing of the standard of review for common-law writs of certiorari.

Even in the pre-1900 cases dealt with by the Florida Supreme Court, the opinions are consistent that "certiorari should not be used to grant a second appeal." Id. at 526. See, Halliday v. Jacksonville & Alligator Plank Road Co., 6 Fla. 304 (1855) and Basnet v. City of Jacksonville, 18 Fla. 523 (1882).

In these pre-1900 cases, it also became apparent that a portion of the standard that we rely upon is a determination as to whether the lower court "failed to proceed according to the essential requirements of law." Jacksonville, T. & K.W. Railway Co. v. Boy, 34 Fla. 389 at 393, 16 So.2d 290 (1894). See, also, Mernaugh v. City of Orlando, 41 Fla. 433, 27 So. 34 (1899).

By 1983, the Florida Supreme Court further defined "departure from the essential requirements of law in Combs v. State, 436 So.2d 93 at 95 (Fla. 1983). This Court held that in considering common law certiorari, District Courts of Appeal should be primarily concerned with the "**seriousness of the error**," not the mere existence of error, and should exercise certiorari discretion "**only**

when there has been a violation of clearly established principles of law resulting in a miscarriage of justice." Id. at 95.

This court further analyzed the development of certiorari review in Heggs, when it compared and contrasted the standards set forth in Combs and Educational Development Center v. City of West Palm Beach, 541 So.2d 106 (Fla. 1989) (hereinafter referred to as EDC). In EDC, this court focused on whether the inferior court "applied an incorrect principle of law." Id. at 541.

Through the analysis provided by this Court in Heggs, it becomes clear that the Combs standard of "observing the essential requirements of law"and the EDC standard of whether the inferior court "applied the correct law" are actually synonymous. Heggs at 530.

In Heggs, this Court clarified and narrowed the scope of common law certiorari jurisdiction. This Court noted that "a decision made according to the form of the law and the rules prescribed for rendering it, although it may be erroneous in its conclusion, **as applied to the facts**, is not an illegal or irregular act or proceeding remedial by certiorari." Id. at 525. In Heggs, this Court held that the proper inquiry under certiorari review is limited to: (1) whether the Circuit Court afforded procedural due process; and (2) whether it applied the correct law. Id. at 528.

This Court concluded in Heggs (an eviction case) that the District Court's opinion in Heggs was an "excellent example of the correct application of the limited standard of review available to

litigants after they have had the benefit of an appeal in a circuit court." Id. at 531. This Court then went on to point out that the ruling of the circuit court "**did not deprive the Petitioner of its day in court, nor has it foreclosed the Petitioner from seeking eviction of the Respondent because of future nonpayment of rent.**" Id. at 531 (emphasis added).

Recently, in Ivey v. Allstate Insurance Co., 774 So.2d 679, 682-683 (Fla. 2000), this Court reproduced a substantial portion of Judge Altenbernd's opinion in Stilson v. Allstate Ins. Co., 692 So.2d 982-83 (Fla. 2nd DCA 1997). This Court "has cautioned the district courts to be prudent and deliberate when [accepting certiorari review], **but not so wary as to deprive litigants and the public of essential justice.**" Ivey, 774 So.2d at 682.

This Court has indicated that the departure from the essential requirements of the law necessary for the issuance of a writ of certiorari is "**something more than a simple legal error.**" Ivey, 774 at 682. This Court has suggested that the District Court should examine the "**seriousness of the error**" and use its discretion to correct an error "**only when there has been a violation of a clearly established principle of law resulting in a miscarriage of justice.**" Ivey, 774 So.2d at 82; Heggs, 658 So.2d at 528; Combs v. State, 436 So.2d 93, 95-96 (Fla. 1983).

In Ivey, this Court ruled that before a District Court can exercise its certiorari jurisdiction, the circuit court's decision

must either: (1) constitute a denial of procedural due process; or (2) result in the application of incorrect law, which causes a miscarriage of justice. Ivey, 774 So.2d at 683.

C. The Applicable Law that was Misapplied

Section 627.736(4), Florida Statutes (1997) makes PIP benefits:

> "due and payable as loss accrues, upon receipt of reasonable proof of such loss and the amount of expenses and loss occurred which are covered by the policy."

Fla. Stat. §627.736(4)(1997).

Section 627.736(4)(b), Florida Statutes (1997), states:

> Personal injury protection insurance benefits paid pursuant to this section shall be overdue if not paid within thirty (30) days after the insurer is furnished written notice of the fact of a covered loss and the amount of same.

Fla. Stat. §627.736(4)(b)(1997).

The above cited statutory language is clear and unambiguous. The above language is not subject to interpretation. It is easily applied to facts involving the review and payment of PIP benefits. Florida PIP law requires that:

> The insurance company has thirty (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 time 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.

Dunmore v. Interstate Fire Insurance Company, 301 So.2d 502 (Fla. 1st DCA 1974) (emphasis added); Kaklamanos v. Allstate Insurance Company, 796 So.2d 555, 558 (Fla. 1st DCA 2001).

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." Levy v. Travelers Insurance Company, 580 So.2d 190, 191 (Fla. 4th DCA 1991); Kaklamanos, 796 So. 2d at 559.

A PIP insured suffers damages as a result of an insurer's failure to pay a bill within thirty (30) days of receipt. See State Farm Mut. Auto. Ins. Co. v. Lee, 678 So.2d 818, 821 (Fla. 1996) (where this Court held that once thirty (30) days elapsed after receipt of the insured's PIP claim, and no benefits were paid on the claim, assuring they were properly due, the insurer had effectively breached their contract with the insured).

Moreover, an insured who incurs reasonable and necessary medical expenses on account of an automobile accident "sustains losses and incurs liability" for PIP purposes. Kaklamanos, 796 So. 2d at 560. The insured who receives such bills is "entitled to sue a defaulting insurer for PIP benefits." Kaklamanos, 796 So. 2d at 560. An insured may be "damaged" by an insurer's failure to pay a claim "even if the insured has not already paid or been sued by the medical provider." Kaklamanos, 796 So. 2d at 560, 561.

Additionally, Article I, Section 21, of the Constitution of the State of Florida states:

> **Access to courts.** - The courts shall be open to every person for redress of any injury, and justice shall be administered without sale, denial, or delay.

Further, Article I, Section 22 of the Constitution of the State of Florida states:

> **Trial by jury.** - The right of trial by jury shall be secure to all and remain inviolate. The qualifications and the number of jurors, not fewer than six, shall be fixed by law.

This is the Florida law that is clear, unambiguous, easy to apply, and not subject to interpretation. Circuit Court Judge Charles Cope failed to apply this law to the facts of this case. Judge Cope applied the incorrect law and caused a serious miscarriage of justice to Petitioner, CARAVAKIS.

D. Properly Applying the Correct Law to the Undisputed Facts of the Case

In the instant case (Caravakis), the following facts are undisputed:

> (1) CARAVAKIS was involved in a motor vehicle collision that occurred on 5/28/98;
>
> (2) At the time of the motor vehicle accident, CARAVAKIS was insured through Allstate Indemnity Company with a policy that provided PIP benefits;
>
> (3) CARAVAKIS was injured as a result of the motor vehicle accident;

> (4) CARAVAKIS received medical care and treatment from Dr. Richman;
>
> (5) The bills from Dr. Richman's office were properly submitted to Allstate in a timely manner;
>
> (6) Allstate received the bills in a timely manner;
>
> (7) Allstate received CARAVAKIS' "no-fault" PIP application in a timely manner;
>
> (8) Allstate unilaterally deemed what it thought to be the amount of reasonable, medically necessary, and causally related expenses and only paid that amount within the statutory time frame;
>
> (9) Allstate, on at least one occasion, paid nothing for one of Dr. Richman's bills;
>
> (10) Allstate unilaterally decided to do this based on the language in its automobile insurance policy and not based on the PIP statute, codified at Section 627.736 Fla. Stat. nor on case law construing the PIP statute;
>
> (11) Allstate did not have an independent medical examiner and did not have a peer review medical expert for purposes of either denying or reducing the medical bills; and
>
> (12) Allstate did all of this on the basis of computer generated explanation of benefits and the ultimate decision of Richard Townsend, an Allstate Insurance adjuster, not a medical expert.

(CCR. 1-4; 5-8; 19-21; 22-36; 37-95; 96-98).

On these undisputed facts and relying on policy language contained in Allstate's insurance policy, instead of the Florida PIP Statute and Florida PIP case law, Circuit Court Judge Cope, in his appellate capacity, concluded that Petitioner, CARAVAKIS,

"suffered no damages." (DCAR. 103-106). Circuit Court Judge Cope failed to apply the clear and unambiguous PIP statute to the facts of this case. Circuit Court Judge Cope ignored the PIP statute and, instead, based his conclusion that Petitioner, CARAVAKIS, suffered no damages on a misinterpretation of the language from Allstate's insurance policy.

Circuit Court Judge Cope failed to understand that an insured who incurs reasonable and necessary medical expenses on account of an automobile accident, sustains losses and incurs liability for PIP purposes, whether or not the medical bills have been paid. Kaklamanos v. Allstate Insurance Company, 796 So.2d at 560.

Circuit Court Judge Cope failed to understand that an insured who receives bills is entitled to sue a defaulting insurer for PIP benefits. Kaklamanos, 796 So.2d at 560.

Circuit Court Judge Cope failed to understand that an insured may 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. Kaklamanos, 796 So.2d at 560-561.

As the First District Court of Appeal in Kaklamanos noted and the Third District Court of Appeals in Gaines v. McArthur, 254 So.2d 8, 10 (Fla. 3rd DCA 1971) noted, there is an important distinction between contracts of indemnity requiring reimbursement of money actually paid and liability insurance contracts like Allstate's automobile insurance policy at issue here.

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 indemnitee or 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. McArthur, 254 So.2d 8,10 (Fla. 3rd DCA 1971)(quoting case comment, 24 Calif. L. Rev. 193 (1936); Kaklamanos, 796 So. 2d at 561. (emphasis added).

The Florida Motor Vehicle No-Fault law makes Allstate an "indemnitor against liability" for reasonable and necessary medical expenses incurred by persons the PIP provisions cover. **"An expense is the same as a debt, and it has been incurred when liability for payment attaches."** Reliance Mut. Life Ins. Co. v. Booker, 166 So.2d 222, 224 (Fla. 2nd DCA 1964); Kaklamanos, 796 So.2d at 561 (emphasis added).

In the instant case (CARAVAKIS), Circuit Court Judge Cope, relying on language in an insurance policy rather than the PIP statute and well known principles of contract law, mistakenly concluded that Petitioner, CARAVAKIS, "suffered no damages."

When properly applying the statutory law and sound principles of contract law, it is clear that in truth, in law, and in fact,

Petitioner, CARAVAKIS, "suffered damages."

Petitioner, CARAVAKIS, went to the doctor. The doctor performed medical services. Petitioner had an automobile insurance contract in place that was obligated to pay PIP benefits. The doctor billed the automobile insurance carrier. The automobile insurance carrier unilaterally decided to completely deny payment of one of the bills in its entirety and unilaterally decided to reduce the balance of a number of the other bills and pay only a portion. The insurance company informed Petitioner of this through Explanations of Benefits.

Notwithstanding Allstate's unilateral denial and/or unilateral reduction of the bills, Petitioner, CARAVAKIS, "remains liable" to Dr. Richman. Petitioner, CARAVAKIS, has received treatment, "incurred an expense," which is the same as "a debt," and Petitioner, CARAVAKIS, is "liable for the balance."

Petitioner, CARAVAKIS, has suffered damages. Petitioner, CARAVAKIS, owes the denied bill in its entirety and owes the balance of the reduced bills. Under Section 627.736(4)(b), Florida Statutes, Petitioner, CARAVAKIS, has been damaged and has standing to file a PIP action for PIP benefits that are overdue, because they have not been paid within thirty (30) days after the insurer is furnished written notice **of the fact of a covered loss and of the amount of same.**

There is no doubt that Circuit Court Judge Cope failed to apply the correct law and such failure was so serious as to result

in a miscarriage of justice to Petitioner, CARAVAKIS. Petitioner, CARAVAKIS, incurred a debt; has automobile insurance to cover his debt, **but still owes money!** Yet, a Circuit Court Judge, in his appellate capacity, concluded that he has suffered no damages. This holding is outrageous and inexcusable and, if it is upheld, will permit Allstate Insurance Company (and all the other insurance companies in Florida) to write language into their insurance policies, which will have the effect of making Florida's PIP law an absolute nullity. Petitioner's counsel can think of no other pending PIP issue that is more important than this issue requiring the proper application of the law to the facts so as to avoid a serious miscarriage of justice not only to Petitioner, CARAVAKIS, but to every owner of a motor vehicle in Florida who is mandated to carry PIP coverage.

Additionally, the Circuit Court's ruling in Caravakis violates a clearly established principle of law by denying access to courts guaranteed by Article I, Section 21, of the Constitution of the State of Florida. The Caravakis case is factually and procedurally unlike the eviction case dealt with in Heggs. In Heggs, this Court held that Petitioner was not deprived "of its day in court," nor was the Petitioner deprived of seeking redress for future nonpayment. Id. at 531. By contrast with Caravakis, the Circuit Court order prohibits Petitioner, CARAVAKIS, access to the courts entirely by denying him standing with respect to these current bills at issue. Further, it would deprive him of the ability to

seek redress for any bills reduced or denied by Allstate in the future. This completely deprives Petitioner, CARAVAKIS, of his "day in court." Such an interpretation of the policy violates the rights and privileges guaranteed by the Constitution of the State of Florida.

Further, Circuit Court Judge Cope violated a well established principle of law guaranteed by Article I, Section 22 of the Constitution of the State of Florida, the right to trial by jury. Petitioner, CARAVAKIS, has been denied the right to a trial by jury through the Circuit Court's ruling in all cases involving a PIP cut off or reduction when Petitioner has not been sued by his medical provider.

The Circuit Court's ruling in this case is such a departure from the essential requirements of law that it amounts to what Chief Justice Boyd of the Florida Supreme Court described as "an inherent illegality or irregularity, an abuse of judicial power, an act of judicial tyranny perpetuated with disregard of procedural requirements, resulting in a gross miscarriage of justice." See, Jones v. State, 477 So.2d 566 at 569 (Fla. 1985).

What is most disturbing to Petitioner, CARAVAKIS, is he is literally in a "class of one" and is without a remedy. Under Florida appellate law, every PIP litigant in the jurisdiction of The Second District Court of Appeal receives the benefit of The First District Court of Appeals opinion in Kaklamanos. The Second District Court of Appeal in a footnote specifically stated:

> Although we are of the opinion that we lack certiorari jurisdiction, we note that future litigants in this district will be bound by the Florida District's decision until the question is squarely decided by this court. See Chapman v. Pinellas County, 423 So.2d 578, 580 (Fla. 2d DCA 1982) ("[A] trial court in this district is obliged to follow the precedents of other district courts of appeal absent a controlling precedent of this court or the supreme court.").

Caravakis v. Allstate Indemnity Co., 806 So.2d 548, 550 n.1 (Fla. 2nd DCA 2001. This is the ultimate "miscarriage of justice"

ARGUMENT II

THE FLORIDA NO-FAULT LAW IS VIOLATED BY THE CIRCUIT COURT'S INTERPRETATION OF ALLSTATE'S AMENDATORY ENDORSEMENT TO THE POLICY WHEREBY ALLSTATE ATTEMPTS TO PROHIBIT ANY LAWSUIT BY A PIP INSURED AFTER ALLSTATE DENIES PAYMENT

The principle objective of Florida Statute Sections 627.730 - 627.7405, "Florida Motor Vehicle No-Fault Law," is to insure prompt payment of PIP claims such that insurers may not impose requirements that are more onerous than those specified in the statute. Dunmore v. Interstate Fire Insurance Company, 301 So.2d 502 (Fla. 1st DCA 1974) (where the PIP carrier failed to pay within thirty days and the court required the payment of fees to Plaintiff's counsel indicating that "there is no provision in the statute to toll this time limitation", narrowly confining the PIP carrier to the provisions in the statute) and Martinez v. Fortune Insurance Company, 684 So.2d 201 (Fla. 4th DCA 1996) (where the PIP carrier similarly attempted to demand something more than was required by the statute in regards to the payment of a wage loss claim and the court held the carrier tightly to the requirements of the statute requiring payment within thirty days).

If an automobile insurance company providing no-fault benefits imposes any additional restrictions or requirements on its insureds than are required through the statute, the policy is to be enforced as if it were in compliance with the statute, irrespective of its

actual terms. State Farm Mutual Automobile Insurance Company v. Chapman, 415 So.2d 47 (Fla. 5th DCA 1982) (where the PIP insurance carrier had attempted to exclude from coverage anyone occupying a vehicle owned by the government and the court found this language impermissible, as it was "in conflict" with the statute. Chapman at 49).

Even beyond the narrow focus of the PIP statute and PIP case law, the Florida legislature states, as set forth in Florida Statute 627.418(1) dealing with insurance contracts, as follows:

> 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 627.412(2) states:

> No policy shall contain any provision inconsistent with or contradictory to any standard or uniform provision used or required to be used, but the department may approve any substitute provision which is, in its opinion, not less favorable in any particular to the insured or beneficiary than the provisions otherwise required.

The courts in Florida have also similarly held that invalid insurance policy language or provisions in other auto policies (i.e. uninsured or underinsured motorist policies) should be

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) and Auto Owners Insurance Company v. DeJohn, 640 So.2d 158 (Fla. 5th DCA 1994).

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

In this particular case involving Petitioner, VERON CARAVAKIS, it is not so much the language of the Allstate amendatory endorsement that is objectionable. More importantly, it is the circuit court's interpretation of the language that makes it far more onerous than the statute allows. Specifically, the language at issue in the policy does not prohibit a PIP insured from pursuing a PIP claim. It simply addresses what purports to be additional protection to the insured if a medical services provider sues the insured. This becomes more onerous through the circuit court's attempt to interpret this language as prohibiting an insured from filing a PIP suit, and it is this interpretation that is improper, impermissible, and in direct violation of the Florida PIP statute.

The Florida no-fault law is also violated by the circuit court's interpretation of Allstate's amendatory endorsement by violating an objective of the PIP statute which is to insure prompt

payment of PIP claims. This objective of the PIP statute has been confirmed, once again, by this Court in Nationwide Mutual Fire Insurance Company v. Pinnacle Medical, Inc., 753 So.2d 55 (Fla.2000). The Pinnacle opinion refers us back to the this Court's opinion in Lasky v. State Farm, 296 So.2d 9 (Fla. 1974).

In Lasky, this Court held that the elimination, in some cases, of a cause of action against the tortfeasor for pain and suffering was constitutionally satisfactory because the legislature had provided **a suitable replacement - PIP coverage**. The Court wrote:

> **In exchange for his previous right to damages for pain and suffering,** with recovery limited to those situations where he can prove that the other party was at fault, **the injured party is assured of recovery of his own salient economic losses from his own insurer.**
>
> **Protections are afforded the accident victim by this Act in the speedy payment by his own insurer of medical costs,** lost wages, etc. ...
>
> **In exchange for the loss of a former right to recover** - upon proving the other party was at fault - for pain and suffering, etc., in cases where the thresholds of the statute are not met, **the injured party is assured a speedy payment of his medical bills and compensation for lost income from his own insurer.**

Id. at 13 and 14 (emphasis added).

This Court's emphasis on speedy payment of PIP claims has withstood many attempted legislative revisions. See, Nationwide,

supra. (Striking down one of the dozens of statutory amendments, the court wrote, "an objective of Florida's motor vehicle no-fault law was to provide persons injured in an accident with prompt payment of benefits.)

In Dunmore, supra, the First District Court of Appeal held in 1974 that if a PIP insurance carrier were allowed to toll the thirty day payment period, it would render the then recently enacted "no-fault" insurance statute into a "no-pay" plan. Dunmore at 502. Much the same, if the circuit court's interpretation of Allstate's policy was to be upheld by this Court, it would render the entire no-fault insurance statute a "no-pay" plan because it would prohibit all PIP insureds in the state of Florida from filing a lawsuit for PIP benefits. Instead, all PIP disputes would be in the form of a health care provider suing the PIP insured and the insurance carrier stepping in to defend the insured. This would prohibit speedy payment of PIP benefits and its PIP insured would first have to hope to be sued by his or her health care provider and, in the meantime, pray that the healthcare provider was willing to continue to provide medical treatment for injuries sustained. In the cases where a healthcare provider chose not to sue the patient/PIP insured, not only would there be the inability to obtain speedy payment, there would be an inability to obtain any payment whatsoever.

This is in direct violation of the foundation of the statute

as stated by the Third District Court of Appeal in Government Employees Insurance Company v. Gonzalez, 512 So.2d 269 (Fla. 3rd DCA 1987): "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 269 (Fla. 3rd DCA 1987).

To allow the circuit court's interpretation of Allstate's amendatory endorsement to prevail would prohibit "swift and virtually automatic payment" and, in many cases, would deny payment altogether, much less swift or automatic payment.

The Florida no-fault statute is also violated by the circuit court's interpretation of Allstate's amendatory endorsement by denying a PIP insured the right to have the dispute determined by the trier of fact. This is particularly true in cases where the healthcare provider decides not to sue the PIP insured and would simply choose to withhold any further treatment and report the indebtedness to a credit agency.

In Derius v. Allstate Indemnity Company, 723 So.2d 271 (Fla. 4th DCA 1998), the Fourth District Court of Appeal confirmed, again, the long established right of a PIP insured to have questions of fact in a PIP case decided by the jury. If the circuit court's interpretation of Allstate's amendatory endorsement in the Caravakis case is upheld, this will prohibit the filing of a lawsuit by a PIP insured, and would deny PIP insureds such as

Petitioner, CARAVAKIS, to the right to have the issue decided by the trier of fact.

Further, if this interpretation of this amendatory endorsement is accepted by this Court, this may encourage healthcare providers to require payment from PIP insureds at the time services are rendered, rather than risk having to file suit against the insured and going up against insurance defense counsel and potential liability for costs and fees through a proposal for settlement. If this were to occur, the PIP insured would be denied the right to have the issue determined by a jury, due to the healthcare provider's response to the situation. This is completely analogous to the situation addressed by this Court in Nationwide Mutual Fire Insurance Company v. Pinnacle Medical, Inc., wherein the legal issue dealt with the mandatory arbitration provision in Florida Statute Section 627.736(5) and the attorney fee provision therein. In fact, this Court in that case stated as follows:

> The effect of the attorney-fee provision in section 627.736(5) is to further delay insureds from receiving medical benefits by encouraging medical providers to require payment from insureds at the time the services are rendered rather than risk having to collect through arbitration.

For all of these reasons, the circuit court's interpretation of the language found in Allstate's amendatory endorsement violates the Florida no-fault law.

ARGUMENT III

RESPONDENT, ALLSTATE'S, INSURANCE POLICY AND AMENDATORY ENDORSEMENTS DO NOT PROHIBIT A PIP SUIT BY THE PETITIONER, VERON CARAVAKIS

The policy language upon which this entire issue is based is found in the Allstate Indemnity Florida Amendatory Endorsement - AIU63-4, page 4. (CCR. 59). This amendatory endorsement reads 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 trails, **we** will pay up to $50 per day for loss of wages or salary. **We** will also pay other reasonable expenses incurred at **our** request.

(CCR. 59) (emphasis in original).

In Petitioner's brief to the circuit court in this matter, Petitioner cited the county court order of Ron Mitch v. State Farm Mutual Automobile Insurance Company, Case No. 99-004033-C0-042, 10-29-99 issued by Judge Blackwood, a Pinellas County Judge.

Petitioner quoted from that order as follows:

> To require the insured to wait until the medical provider initiates collection efforts against the insured would make a mockery of the contractual and statutory obligation of the defendant insurance company to pay for reasonable and necessary medical expenses arising out of an automobile accident. The Court finds that such a construction to be placed upon Defendant's obligation pursuant to its contract with the insured and applicable statutes would have an unconscionable result and could foreseeabley have a chilling effect upon the ability of an insured to obtain medical treatment.

The Mitch case dealt with the same issue brought about by State Farm in an attempt to deny its insured access to the courts. Similarly, in the Caravakis case, the construction or interpretation that we are dealing with is of the Allstate Indemnity Florida Amendatory Endorsement - AIU63-4. (CCR. 59).

The first paragraph of Allstate's Amendatory Endorsement allows Allstate to refuse to pay certain medical expenses that they deem unreasonable or unnecessary and to contest them. (CCR. 59). Nothing in that first paragraph prohibits the PIP insured, VERON CARAVAKIS, from bringing a PIP action based on this refusal.

The second paragraph of this provision is only applicable, by its own terms, "**if the insured person is sued by a medical services provider.**" (CCR. 59).

There is nothing in either of the paragraphs of this provision that prohibits a PIP insured such as the Petitioner in this case,

CARAVAKIS, from bringing a claim directly against Respondent, Allstate.

There is nothing in this provision that prohibits a PIP insured from suing Allstate for PIP benefits regardless of whether the medical services provider sued the insured.

This amendatory endorsement **does not** prohibit an Allstate insured from suing Allstate for medical expenses that have been reduced or denied by Allstate.

There is nothing in the Allstate policy or any of the amendatory endorsements that prohibits Petitioner, VERON CARAVAKIS, from filing a lawsuit and pursuing the claim to verdict against Allstate for PIP benefits that have been reduced or denied.

In fact, to read the provision in question, it is clear that there is no prohibition whatsoever in either this provision of the amendatory endorsement, or anything in the policy that would indicate that Petitioner, VERON CARAVAKIS, could be giving up a right to sue his own insurance company for a denial of benefits. Such an interpretation is in direct violation of the policy and endorsements in question. This is made even more egregious by the notice in their policy indicating "Being in good hands is the only place to be." This notice also guarantees "prompt" service and "fast, fair claims service." (CCR. 50-59). Thus, the policy as a whole leading up to this amendatory endorsement would lead an individual to believe that the language of the amendatory

endorsement is a potential benefit to the insured in the event he were ever to be sued by a medical service provider. Nowhere could a layperson or even a lawyer guess that the insurance company would attempt to interpret this language as a limitation on the insured's right to pursue a claim against Allstate.

Accordingly, the circuit court's interpretation of Allstate's amendatory endorsement in question is disingenuous and in direct violation of the policy itself which guarantees prompt, fast and fair claims service.

ARGUMENT IV

THE CIRCUIT COURT'S INTERPRETATION OF ALLSTATE'S AMENDATORY ENDORSEMENT IS AGAINST PUBLIC POLICY

Over a quarter of a century ago, this Court in Lasky, supra, clearly stated an objective of Florida's motor vehicle no-fault law, which was to provide persons injured in an accident with prompt payment of benefits. Id. at 16. This Court in Pinnacle, supra, reflected upon the Lasky opinion in the context of healthcare providers facing mandatory arbitration and stated as follows:

> Similarly, the legislative objective of section 627.428(1), Florida Statutes, which provides for an award of attorney fees against insurers who wrongfully deny benefits, was to discourage insurance companies from contesting valid claims and to reimburse successful insureds for their attorney fees when they are compelled to sue to enforce their insurance contracts. See, State Farm Fire & Casualty Company v. Palma, 629 So.2d 830, 833 (Fla. 1993). Under section 627.736(5), medical provider-assignees are subject to attorney fees, while insureds suing to enforce the exact same contract enjoy the one-way imposition of attorney fees against insurers provided in section 627.428(1). This distinction does nothing to further the prompt payment of benefits or to discourage insurers' denial of valid claims. The effect of the attorney-fee provision in section 627.736(5) is to further delay insureds from receiving medical benefits by encouraging medical providers to require payment from insureds at the time the services are rendered rather than risk having to collect through arbitration.

This Court, in Pinnacle was clearly aware of the effect of the attorney-fee provision in section 627.736(5) on medical providers. We are, again, facing the exact same public policy issue here in the Caravakis case that this Court dealt with just two years ago in Pinnacle. The only difference here is the concern a physician will have over a proposal for settlement whereas, in Pinnacle, the attorneys-fee provision against a medical provider was Florida Statute 627.736(5).

The effect is the same. The "chilling effect" this would have on a PIP insured's ability to obtain health care is disturbingly against public policy.

While Pinnacle dealt with a medical provider's access to courts and due process rights, the impact and effect in terms of the rationale is the same.

The dynamics of the dispute between a PIP insured and the PIP carrier are also well analyzed by this Court in the case of Ivey v. Allstate Insurance Company, supra. In Ivey, this Court reflected on the attorneys-fees provisions in the PIP statute as follows:

> It is clear to us that the purpose of this provision is to level the playing field so that the economic power of insurance companies is not so overwhelming that injustice may be encouraged because people will not have the necessary means to seek redress in the courts.

Id. at 684.

The application of this insightful analysis to this case currently before this Court is clear that the circuit court's

interpretation of Allstate's policy language is an undeniable affront to individual rights and against public policy.

CONCLUSION

For the foregoing reasons, Petitioner, CARAVAKIS, respectfully requests this Court find that certiorari jurisdiction exists and quash the Circuit Court's Opinion and remand to the County Court for a trial by jury on whether the medical bills at issue are reasonable, medically necessary and causally related to the motor vehicle collision.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing brief has been furnished by regular U.S. Mail to ANTHONY J. PARRINO, ESQ., Reynolds & Stowell, P.A., 8700-4th Street North, St. Petersburg, FL 33702 (counsel for Respondent, ALLSTATE INDEMNITY COMPANY); PETER J. VALETA, ESQ., Ross & Hardies, 150 N. Michigan Avenue, Chicago, IL 60601 (additional counsel for Respondent, ALLSTATE INDEMNITY COMPANY); and, DAVID B. SHELTON, ESQ. and CANDY L. MESSERSMITH, Rumberger, Kirk & Caldwell, Post Office Box 1873, Orlando, FL 32802-1873 (counsel for Amicus, National Association of Independent Insurers), this 28th day of May, 2002.

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CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY that the type style and font in the foregoing brief complies with and satisfies the requirements of Rule 9.100 and Rule 9.210, Florida Rules of Appellate Procedure. Executed this 28th day of May, 2002

By: _____
Tony Griffith, Esquire