IN THE SUPREME COURT OF FLORIDA

CASE NO. SC02-2659

Florida Bar No. 184170

CYNTHIA CLEFF NORMAN, as Personal Representative of the Estate of WILLIAM CLEFF, deceased,

Petitioner,

v.

TERRI LAMARRIA FARROW,

Respondent.

ON PETITION FOR DISCRETIONARY REVIEW
FROM THE FIRST DISTRICT COURT OF APPEAL

BRIEF OF PETITIONER ON THE MERITS
CYNTHIA CLEFF NORMAN,
as Personal Representative of the Estate of
WILLIAM CLEFF,

(With Appendix)

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TABLE OF CONTENTS

TABLE OF CITATIONS

TABLE OF CITATIONS (Continued)

TABLE OF CITATIONS (Continued)

TABLE OF CITATIONS (Continued)

Pages

REFERENCES

POINT ON APPEAL

THE FOURTH DISTRICT'S DECISION IN ASSI, AND THE SUPREME COURT'S DECISION IN PIZZARELLI, CORRECTLY CONSTRUED THE LAW OF FLORIDA TO PROVIDE THAT THERE WILL BE A SET-OFF FOR ALL PIP BENEFITS PAID OR PAYABLE.

STATEMENT OF THE CASE

This case arose out of a rear end automobile accident on December 8, 1998, when the Defendant/Petitioner, William Cleff, struck the rear of an automobile driven by the Plaintiff/ Respondent, Terri Farrow.

The case went to trial resulting in a finding that Defendant Cleff was 90% at fault, and the Plaintiff Farrow was 10% at fault.

After trial, the trial judge made numerous rulings which were the subject of a subsequent appeal as follows:

> 1. Rather than reducing the Verdict by the full amount of the PIP payments, the trial court reduced the amount of PIP set-off by the Plaintiff's 10% comparative negligence.
>
> 2. The trial court erred in not "setting off" the entire amount of PIP benefits paid or payable at the time the proposal of settlement was filed for purposes of deterining whether Appellee was entitled to attorney's fees pursuant to her Proposal for Settlement.
>
> 3. The trial court reduced the "judgment obtained," pursuant to the Proposal for Settlement, by the amount the plaintiff had paid for no-fault insurance, for one full year.
>
> 4. The trial court, in computing the "judgment obtained" included taxable costs.
>
> 5. The plaintiff had filed a Request for Admissions that the defendant was negligent, which was denied by the defendant. The defendant submitted evidence at trial that the plaintiff caused the accident by cutting in front of him and stopping, resulting in a finding that the defendant was 90% at fault, and the plaintiff was 10% at
>
> fault. Despite this finding of the jury, the court awarded attorney's fees to the plaintiff, because the defendant failed to

admit the defendant was negligent.

An appeal was taken to the First District Court of Appeal, raising on appeal that these five rulings were erroneous. The First District held that the latter four rulings were not ripe for appellate review, since the amount of attorney's fees had not yet been determined, and an appeal can not be taken from an order on entitlement to attorney's fees. The First District dismissed the appeal on those four issues, without prejudice to appeal after the amount of attorney's fees have been determined and a Final Judgment entered.

On the first ruling, namely the amount of the PIP set-off, the First District held that the PIP set-off should be reduced by the plaintiff's comparative negligence, and therefore only applied a set-off for $4,498.35, or 90% of the PIP payments, rather than $4,998.17[1], or 100% of the PIP payments.

The Defendant/Petitioner then filed a Petition for Discretionary Review to this Court. This Court accepted jurisdiction, and this Brief is being filed on the merits.

STATEMENT OF FACTS

On December 8, 1998, an automobile accident occurred in which Defendant, Cleff, struck the automobile driven by the

[1] In the Opinion of the First District, by inadvertence two numbers were transposed. The Opinion of the First District states that the gross PIP setoff was $4,989.17, and that number should be $4,998.17.

Plaintiff, Farrow, from the rear. Cleff presented evidence and testimony that the plaintiff cut in front of him and stopped, not allowing him sufficient time to stop, thereby causing the accident. The testimony of Mr. Cleff was as follows:

> Q. Can you tell the jury what happened when you went out of University?
>
> A. Well, there was no cars coming, so I made the turn on University, made a right turn. And I was going north, and all of a sudden, this red car came alongside of me. I don't know where it came from. It came alongside, cut in front of me and stopped.
>
> Q. What happened when the red car stopped?
>
> A. Well, I put the brakes on. I stopped, I started stopping. I couldn't stop. If you know anything about these new cars, they have an anti-skid brake on them.
>
> Q. Okay. When this red car pulled in front of you and stopped, did it give you enough time to stop?
>
> A. No, she didn't.
>
> (T Vol. III, pg. 321).

At the conclusion of the trial, the jury found the Defendant, Cleff, 90% negligent, and the Plaintiff, Farrow, 10% negligent.

The issue which is involved on this appeal occurred post-verdict, on a Motion to Determine the Amount of Set-Off. The Verdict totalled $19,647.71, and the PIP benefits were $4,998.17, which was 80% of the medical bills submitted to the jury. However, the court, rather than applying a set-off for $4,998.17, only applied a set-off for $4,498.35. In other words, the trial court reduced the setoff by the 10%, which comprised the plaintiff's comparative negligence.

The exact calculation is as follows:

FINAL JUDGMENT CALCULATIONS

The trial court calculated the final judgment by reducing the total jury verdict of $19,647.71 by 10% ($1,964.77) for Appellee's comparative negligence (R Vol. III, p. 431). The court then allowed a setoff for no fault benefits in the amount of $4,498.35[2] (R Vol. III, p. 431).

Trial Court's Calculation of PIP Setoff for Final Judgment

$6,247.72	Medical bills submitted to jury which were paid
x80%	or payable by PIP.
$4,998.17	80% of medical bills submitted to jury.
- 499.82	Reduction of Appellee's 10% comparative negligence.
$4,498.35	Amount of PIP setoff of Final Judgment allowed by trial court.

The trial court, pursuant to § 57.041, then added taxable costs to the judgment in the amount of $4,868.44, thereby resulting in a total judgment of $18,053.03 (R Vol. III, pp. 431-432).

Trial Court's Calculation of Final Judgment

$19,647.71	Total Jury Verdict
- 1,964.77	less Appellee's 10% comparative negligence
$17,692.94	
- 4,498.53	less PIP setoff allowed by trial court
$13,184.59	
+ 4,868.44	plus Taxable Costs (pursuant to § 57.041, Fla. Stat.
$18,053.03	FINAL JUDGMENT

It should be noted that only the calculation of the amount of the PIP setoff, is the subject of this appeal. An appeal was taken

[2] This amount equaled 80% of the bills submitted rather than the $5,573.04 actually paid. This 80% amount was reduced based on the amount refunded to Chiropractor Renfroe and Appellee's 10% comparative negligence.

to the First District Court of Appeal, which construed the issue of whether there should be a PIP setoff for the full amount of PIP benefits received in the amount of $4,998.17, or whether that amount should be reduced by the plaintiff's 10% comparative negligence, namely by $499.82, to apply a PIP setoff of $4,498.35.

The First District in its opinion discussed the fact that there was a conflict of Florida caselaw, as to whether there should be a deduction for all PIP benefits, or whether the setoff should be reduced by the percentage fault of the plaintiff.

The First District noted that the case of Assi v. Florida Auto Auction of Orlando, Inc., 717 So. 2d 588 (Fla. 5th DCA 1998), holds that the plaintiff is entitled to a set-off for all amounts of PIP paid or payable, regardless of comparative negligence. The court noted that on the other hand, the Fourth District case of Aetna Casualty & Surety Co. v. Langel, 587 So. 2d 1370 (Fla. 4th DCA 1991) holds that PIP and MED PAY should be reduced by the plaintiff's percentage of comparative negligence.

The First District held that it agreed with Langel and disagreed with Assi, and held that the PIP set-off should be reduced by the plaintiff's percentage of comparative negligence.

The court's holding is as follows:

> We agree with *Langel*, and do not agree with *Assi*. The set-off is dictated by the statutory language providing that the injured party shall have no right to recover any damages for which personal injury protection benefits are paid or payable. "The purpose of a set-off is to avoid duplication of benefits." *Pate v. Renfore*, 715 So.2d 1094, 1099 (Fla. 1st DCA 1998). The supreme court has explained

> that the purpose of the prior statute allowing an insured the right to reimbursement of any payments made to an insured who subsequently recovered against a tortfeasor, "was to prevent injured plaintiffs from receiving double recovery." *Purdy v. Gulf Breeze Enters., Inc.*, 403 So.2d 1325, 1328 (Fla. 1981). Here, we are persuaded that the method utilized by the trial court avoided duplication of benefits to the plaintiff. The total jury award, which we must assume included medical and wage loss, those items provided by PIP insurance, was reduced by her own ten percent comparative negligence. By deduction then, the amount she recovered as medical payments, and lost wages was also reduced by ten percent. Stated otherwise, the jury's finding of ten percent comparative negligence has already given appellant a reduction, or set-off, for ten percent of the PIP. There-
> fore, the trial court's calculation, which reduced the set-off by ten percent of the PIP, completely avoided duplication of benefits, as dictated by the Legislature.

A Notice of Invoking Discretionary Jurisdiction was filed by the Defendant/Petitioner to this Honorable Court, and the Brief of Petitioner was filed, contending the opinion of the First District in the present case conflicts with the decision of the Fifth District in Assi, supra, and Rollins v. Pizzarelli, infra. This Honorable Court accepted jurisdiction, and this Brief is being filed on the merits.

SUMMARY OF ARGUMENT

The PIP set-off has been consistently applied in a routine manner for the last 27 years, and the decision of the First District in this case is a departure from this long-standing construction of the PIP statute by the trial and appellate courts.

The routine procedure for applying PIP set-offs, which is used in scores of trial court cases each year and has been for 27 years since 1976, is that the comparative negligence of the plaintiff is used to reduce the verdict, and then the full amount of PIP benefits is subtracted from this reduced verdict.

The First District held that, this traditional procedure which has been used for 27 years, is the wrong procedure. The First District held that after the comparative negligence reduction is applied to the verdict, the set-off for PIP benefits is only for the defendant's percentage of negligence. In other words, the plaintiff receives a double recovery of his percentage of negligence as applied to the PIP payments.

This is clearly contrary to the legislative intent of the PIP statute and must be reversed; and Assi v. Florida Auto Auction, infra, and Rollins v. Pizzarelli, infra, should be accepted as the law of Florida. The Fifth District in Assi, supra, correctly applied the PIP statute to provide a set-off for all amounts of PIP paid or payable. Furthermore, the Florida Supreme Court in Rollins v. Pizzarelli, infra, clearly held that all PIP benefits paid or payable are set-off.

The intent of the legislature in passing the PIP statute, and

the way it was designed, was to avoid litigation for small claims up to $10,000. A party would quickly be paid his medical bills and lost wages of up to $10,000 by PIP benefits without regard to fault, and litigation would be unnecessary.

Clearly, nothing in the No-Fault Statute evidences an intent to apply a concept of fault, or comparative fault, to PIP benefits, nor an intent to reward a party who files suit to recover PIP benefits.

Furthermore, the exact language of the PIP statute provides that all PIP benefits received will be set-off. What the First District did, most respectfully, was to ignore the clear wording of the PIP statute, and instead "legislated" a holding rather than follow the clear intent of the legislature.

Therefore, this interpretation by the First District is contrary to the express intent of the PIP statute, by putting a concept of comparative fault into the PIP statute, and by rewarding a party who files suit by being able to recoup some of the PIP payments from the opposing party.

Further, the intent of the legislature in passing the 1976 version of the PIP statute, was to avoid the plaintiff's receiving a double recovery of medical bills. It was determined that under the earlier procedure, prior to the collateral source statutes, there was an incentive for parties to have unnecessary and extensive medical treatment, and to have inflated medical bills and other economic benefit payments, since they would receive a double recovery on these payments from the tortfeasor. The greater the medical payments or other economic benefit payments, the greater the plaintiff would

benefit by way of a double recovery.

The history of this section of the No-Fault Statute clearly shows that the intent of the legislature was that 100% of the PIP benefits would be set-off from the judgment. The first version of this section, when the No-Fault Statute was first passed in 1971, did not provide a set-off. Instead, it provided that after the plaintiff recovered a judgment against the tortfeasor, his PIP carrier would file a motion for equitable distribution, and the trial court would determine how much the PIP carrier would recoup, taking into account the costs and attorneys' fees expended by the plaintiff to recover the judgment. This procedure was adopted from the procedure in workers' compensation.

However, there was such extensive litigation to determine the equitable distribution of the PIP benefits of $10,000 or less, that in 1976 the legislature decided to change this portion of the statute. In the four years the 1971 provision was in effect, there were at least 31 appellate decisions addressing the issue of equitable distribution, and this gives an indication of the massive volume of trial court litigation.

Therefore, when the legislature decided to change this provision in 1976, the preliminary version of the statute provided that after the plaintiff settled with the tortfeasor, that he would repay the PIP benefits to his own PIP carrier. The legislative history has been filed with this Court and the relevant excerpts are quoted in this Brief. When the amendment was passed, the final version provided that the PIP carrier would not recover this amount

back, but rather the amount of PIP benefits received would be set-off from the judgment against the tortfeasor. The theory was that since the tortfeasor's insurance carrier would benefit from this procedure, all automobile insurance carriers would benefit, and additionally would benefit from the fact that no attorneys' fees were necessary. This procedure eventually would benefit the public by its impact on premiums.

In summary, this decision by the First District defeats the intent of the No-Fault Statute, which is that small claims under $10,000 will be paid quickly without regard to fault, and that PIP payments will be deducted from the tort settlement. This holding also defeats the purpose of the PIP statute, of preventing a double recovery for medical and economic benefits, and therefore creates a motivation for a plaintiff to unnecessarily extend or inflate medical or other economic benefits, in order to achieve a double recovery. Under the ruling of the First District a party is rewarded for filing suit against a tortfeasor, by being able to have a double recovery of the plaintiff's own percentage of fault as applied to the PIP benefits. The plaintiff benefits from this double recovery, because the PIP benefits have been paid to him without regard to fault, but he is now able to recover from the tortfeasor some percentage of these PIP benefits.

ARGUMENT

THE FOURTH DISTRICT'S DECISION IN ASSI, AND THE SUPREME COURT'S DECISION IN PIZZARELLI, CORRECTLY CONSTRUED THE LAW OF FLORIDA TO PROVIDE THAT THERE WILL BE A SET-OFF FOR ALL PIP BENEFITS PAID OR PAYABLE.

Standard of Review

Since this case is on review on discretionary jurisdiction, the Standard of Review is whether there is express and direct conflict between the opinion in the present case, and the holding in other appellate cases. Dodi Publishing Company v. Editorial America, S.A., 385 So. 2d 1369 (Fla. 1980). It is respectfully submitted that there clearly is express and direct conflict between the opinion in the present case, and the Fourth District's opinion in Langel, supra.

Purpose of No-Fault Law

The purpose of the no-fault law was to avoid litigation in small claims, which would be paid quickly, by way of payment for medical bills and lost wages up to $10,000 in PIP benefits. In the last 27 years, the routine procedure for calculating a Final Judgment after jury verdict, is that all of the PIP benefits paid or payable are set-off from the verdict. The way the Florida No-Fault Statute was written, is that a party recovers PIP benefits without regard to fault, but then can not recover from the tortfeasor any amount he was paid for PIP benefits. The purpose of the no-fault law was to take the determination of fault out of automobile accidents, to the extent of the first $10,000 of recovery.

Traditional Application of PIP Set-Off v. Application Under First District's Holding

Pursuant to the ruling of the First District, a party will obtain a windfall by filing suit, in that he will be able to recoup some percentage of the PIP benefits he received, namely the percentage of his comparative negligence as applied to the PIP benefits.

An example of how this would operate, would be the situation where a plaintiff has been paid $10,000 by PIP, and obtains a verdict for $25,000, and the jury finds that the plaintiff was 50% negligent. Under the routine procedure, which has been used for computing verdicts, and is used scores of times each year across the state, the 50% comparative negligence is applied to the $25,000 verdict to yield $12,500. The $10,000 PIP set-off is then subtracted from the $12,500 to yield a net verdict of $2,500. Therefore, the plaintiff has recovered a total of 50% of his damages, namely $2,500 from the tortfeasor plus $10,000 from the PIP carrier, for a total of $12,500. Therefore, this traditional procedure meshes perfectly with comparative negligence.

The application of the decision of the First District in this case would yield a recovery substantially different. After the 50% comparative negligence is applied to the $25,000, this would yield $12,500. Thereafter, the PIP collateral source set-off would only be $5,000 (50% of $10,000), to yield a judgment of $7,500. Therefore, instead of recovering 50% of his damages, the plaintiff has recovered 70% of his damages ($7,500 from the tortfeasor, plus $10,000 from the

PIP carrier) for a total of $17,500.

Clearly, nothing in the no-fault statute evidences an intent to apply a concept of fault, or comparative fault, to PIP benefits, nor an intent to reward a party who files suit to recover PIP benefits. In fact, this is the opposite of the purpose of the no-fault statute: 1) to avoid discussion of fault as to PIP benefits; 2) to facilitate speedy payment of up to $10,000, in economic damages, regardless of fault; and 3) to avoid litigation. But, if a plaintiff files suit, he cannot recover from the tortfeasor any of the PIP benefits he received, thus avoiding a windfall.

A Windfall

The decision of the First District results in a windfall to the plaintiff. PIP payments are paid to the plaintiff without regard to fault. In other words, even though in the previous example the plaintiff was 50% at fault, nevertheless he recovered his economic losses through PIP recovery, without regard to fault. However, if he files suit against the tortfeasor, the plaintiff is rewarded for filing suit, since he can recover from the tortfeasor his percentage of comparative fault as applied to the PIP benefits, for a double recovery.

Assi and Pizzarelli

The decision by the First District in this case is in express and direct conflict with Assi and Pizzarelli. In Assi, the Fifth District construed this statute, and held there was a set-off for all

PIP benefits received. Similarly, the Florida Supreme Court interpreted this provision, namely § 627.736(3), Fla. Stat. (Supp. 1996), and held that all PIP benefits which are "paid or payable" are set-off from the judgment. Rollins v. Pizzarelli, 761 So. 2d 294 (Fla. 2000). The issue on review in the Florida Supreme Court was whether PIP benefits which were to be paid in the future should be set-off from a verdict, or whether only PIP benefits which had been paid at the time of trial, should be set-off. The Florida Supreme Court held that there should be a set-off by all of the PIP benefits that are paid or owed by the PIP carrier at the time of trial. It is noteworthy that the Supreme Court made clear in its opinion that there is a set-off for all PIP benefits paid or payable, and nowhere states there is only a set-off reflecting the defendant's percentage of negligence, as applied to PIP benefits paid or payable.

> In summary, by examining the dictionary and case law definitions of the term "payable," applying well-recognized principles of statutory construction and examining legislative history, we conclude that the proper interpretation of the term "payable" is that only PIP benefits "currently payable" or owed by the PIP carrier as a result of expenses incurred by the plaintiff should be set off from a verdict that includes an award of future medical expenses. Accordingly, we answer the certified question in the affirmative, approve the decision of the Fourth District, and disapprove *Kokotis*.
>
> Rollins, 301.

Therefore, Pizzarelli also is authority that the First District's decision in Farrow is contrary to Florida law, and should be reversed, with instructions to set-off all PIP benefits received.

The decision of the First District encourages litigation, which is contrary to this legislative policy. By filing suit, a plaintiff can recover some portion of the PIP benefit he had been paid, via a reduced setoff, depending on his comparative negligence. Therefore, the opinion of the First District conflicts with the legislative policy by encouraging litigation.

The opinion of the First District also results in a windfall to the plaintiff. PIP benefits are paid to the plaintiff without regard to fault, and therefore, by allowing the plaintiff to recover some percentage of those PIP benefits from the tortfeasor, this results in a windfall. This is contrary to the purpose of the PIP statute, of not encouraging litigation, and not providing an incentive to inflate medical bills by allowing a double recovery.

First Version of No-Fault Statute - 1971

The first version of the No-Fault Statute, written in 1971, required that the PIP carrier would pay PIP benefits to the plaintiff without regard to fault, but when the plaintiff recovered against the tortfeasor, the PIP carrier was entitled to equitable distribution of some portion of the amount the plaintiff recovered from the tortfeasor. The trial court in determining the amount of equitable distribution was required to take into account costs and attorney's fees required to recover the PIP benefits. This procedure was adopted from the procedure in workers' compensation.

1976 Version

However, due to the fact that this procedure caused extensive

litigation to determine the amount of equitable distribution of $10,000 or less, the statute was changed to provide that the plaintiff's PIP carrier would not be entitled to any equitable distribution, but that the full amount of PIP benefits would be subtracted from the plaintiff's recovery. In other words, the plaintiff would not be able to recover the funds, which in effect belonged to his PIP insurance carrier. The theory was that the public would share the benefit of this procedure through its impact on insurance rates.

The Present Florida Statute

The Florida No-Fault Statute, § 627.736(3), Fla. Stat. (1977), specifically provides that the plaintiff can not recover damages for which PIP benefits are paid or payable. It does not state that this off-set applies only for the percentage of the PIP benefits reflecting the defendant's percentage of liability. It is clear a plaintiff can not recover for any damages paid by PIP benefits; and, in fact, the statute so states three times:

> (3)Insured's right to recovery of special damages in tort claims.--No insurer shall have a lien on any recovery in tort by judgment, settlement, or otherwise for personal injury protection benefits, whether suit has been filed or settlement has been reached without suit. An injured party who is entitled to bring suit under the pro- visions of §§ 627.730-627.405, or his or her legal representative, shall have no right to recover any damages for which personal injury protection benefits are paid or payable. The plaintiff may prove all of his or her special damages notwithstanding this limitation, but if special damages are introduced in evidence, the trier of facts, whether judge or jury, shall

> not award damages for personal injury protection benefits paid or payable. In all cases in which a jury is required to fix damages, the court shall instruct the jury that the plaintiff shall not recover such special damages for personal injury protection benefits paid or payable.
>
> Fla. Stat. §627.736.

Therefore, the statute is clear that the plaintiff is not to recover any damages paid by PIP benefits, and there is no wording in the statute which could be construed to mean that the percentage of comparative negligence should be applied to decrease the defendant's set-off for PIP benefits paid or payable.

Furthermore, Florida Statute § 627.737 specifically states that a party is "exempted from tort liability" to the extent of any damages which are payable by PIP benefits:

> **627.737. Tort exemption; limitation on right to damages; punitive damages**
>
> (1) Every owner, registrant, operator, or occupant of a motor vehicle...and every person or organization legally responsible for her or his acts or omissions, is hereby exempted from tort liability for damages because of bodily injury...to the extent that the benefits described in § 627.736(1) are payable for such injury...
>
> Fla. Stat. § 627.737, Fla. Stat. (1999).

It should be noted that the statute states the exemption is to the extent of benefits described in Fla. Stat. § 727.736(1). This provision says nothing about a reduction for comparative negligence, and the provision specifically applies to PIP benefits:

> **627.736. Required personal injury protection benefits; exclusions; priority; claims**

> (1) Required benefits.--Every insurance policy complying with the security requirements of § 627.733 shall provide personal injury protection...to a limit of $10,000 for loss sustained by any such person as a result of bodily injury, sickness, disease, or death arising out of the ownership, maintenance, or use of a motor vehicle as follows.
>
> Fla. Stat § 627.736.

Therefore, it is clear that under the Florida No-Fault Statute, a party recovers PIP benefits without regard to fault, but then can not recover from the tortfeasor any amount that was paid by PIP benefits.

In other words, the whole point of the "no-fault law" was to take the determination of fault out of automobile accidents, to the extent of the first $10,000 of recovery. A party automatically recovers PIP benefits up to $10,000 without regard to fault, but then can not recover this amount from the tortfeasor. The purpose is to encourage settlement of small cases without resorting to litigation.

However, the effect of the decision of the First District in the present case, is that a party will be encouraged to file suit, by being able to recoup some of his PIP benefits. There will only be a set-off reflecting the defendant's percentage of fault, and therefore the plaintiff will be able to recover PIP benefits reflecting his own percentage of fault, but will not have to refund this amount to the PIP carrier. Therefore, there is a duplicate recovery of these PIP benefits.

Supreme Court Discusses Legislative History

This legislative history was discussed by the Florida Supreme

Court in the case of Purdy v. Gulf Breeze Enterprises, Inc., 403 So. 2d 1325 (Fla. 1981). In Purdy, a jury trial was held involving an automobile accident, wherein the parties agreed to take up PIP set-offs after trial. At the post-trial hearing, the plaintiff contended that § 627.736(3) and § 627.737(2), Fla. Stat. (1977) were unconstitutional. The trial court held that the statutes were constitutional, and reduced the jury verdict by the amount the plaintiff had received in PIP benefits, less the amount of premiums he had paid to obtain that coverage for that year.

The plaintiff appealed. The case eventually went to the Florida Supreme Court, with the plaintiff contending that these two statutes were unconstitutional because they violated the right of access to the courts, by abolishing the common law collateral source rule, thereby denying the injured plaintiffs the full recovery of their damages. For this principle, the plaintiff relied on the cases of International Sales-Rentals Leasing Co. v. Nearhoof, 263 So. 2d 569 (Fla. 1972); Tuggle v. Government Employees Insurance Co., 207 So. 2d 674 (Fla. 1968).

In upholding the constitutionality of the statute, the Florida Supreme Court discussed the history of the statute. The court noted that the right of subrogation of a PIP carrier was recognized when the Florida Automobile Reparations Reform Act (No-Fault Act) was passed in 1971. In that first enactment of the No-Fault Statute, the scheme provided that the insurer had a right to reimbursement of any PIP payments made when the injured plaintiff recovered against the tortfeasor, via equitable distribution. The Supreme Court noted that

the purpose of this provision was to prevent plaintiffs from a double recovery, and the Supreme Court further noted that in that first enactment, the insurer was entitled to an equitable distribution taking into account the cost of litigation. The court expressly noted that this equitable distribution provision resulted in a substantial amount of litigation to determine the amount of equitable distribution. The Supreme Court noted that one district court judge had suggested that the legislature change this aspect of the statute because it encouraged litigation, and the Supreme Court noted that in 1976, the legislature did change this subsection, and passed the current subsection, namely Ch. 76-266, § 4, Laws of Florida. This new section provided that insurers are no longer entitled to reimbursement of PIP payments made to the insured, but in order to prevent a double recovery, the statute provided that any PIP payments which the plaintiffs had received from the insurer would be set-off from the amount the plaintiff eventually recovered from the tortfeasor. The Supreme Court noted that this was in keeping with the "No-Fault" concept of the statute, and that since the reduced benefits paid by the tortfeasors would inure to the insurance carriers, these benefits would be shared by all carriers, without the need of the extensive litigation to determine equitable distribution, which should favorably impact on premiums.

The Florida Supreme Court held that Ch. 76-266, § 4, Law of Florida, did not deprive injured persons the right to access to the courts, since they could waive their rights to receive PIP benefits or other insurance benefits, and thereby sue the tortfeasor for the

full amount of their damages.

The following is the discussion by the Florida Supreme Court, discussing the history of the statute:

> Basically, sections 627.736(3) and 627.7372 reduce the amount of damages injured plaintiffs can recover from tortfeasors by the amount of benefits they have received from collateral sources. Appellants argue these statutes therefore abolish the common law collateral source rule that injured plaintiffs are entitled to recover the full amount of their damages from tortfeasors regardless of the amount of benefits they may have received from collateral sources such as insurance proceeds. See *International Sales-Rentals Leasing Co. v. Nearhoof*, 263 So.2d 569 (Fla. 1972); *Tuggle v. Government Employees Insurance Co.*, 207 So.2d 674 (Fla. 1968)(Barns, J., dissenting). This argument assumes that common law plaintiffs were allowed to keep the full amount of money they recovered in a lawsuit, which was not the case. Their right of full recovery was subject to their insurer's right of subrogation. This is, as a matter of equity it was the insurers who were entitled to bring suit against tortfeasors for reimbursement of any payments made to an insured. See generally, *Atlantic Coast Line Ry. v. Campbell*, 104 Fla. 274, 139 So. 886 (1932); *Cappucio, Subrogation in Florida*, 21 U.Miami L.Rev. 240, 247-249 (1966).
>
> This right of subrogation was statutorily recognized by the Florida Automobile Reparations Reform Act, sections 627.730-627.741, Florida Statutes (1971), when it was first enacted. Section 627.736(3) was previously a provision concerning an insurer's right to reimbursement of any payments made to an insured who subsequently recovered against a tortfeasor. § 627.736(3), Fla. Stat. (1975). Its main purpose was to prevent injured plaintiffs from receiving double recovery. Cf. *Aetna Casualty & Surety Co. v. Bortz*, 271 So.2d 108 (Fla. 1972)(this was the purpose behind the Workmen's Compensation Subrogation Law, § 440.39(3), Fla.Stat. (1971), after which § 627.736(3), Fla.Stat. (1975) was patterned).

> This provision entitled the injured plaintiff to an equitable distribution of the costs of litigation which resulted in a lot of litigation. See, e.g., *American Fire & Casualty Co. v. Oller*, 313 So.2d 67 (Fla. 4th DCA 1975); *White v. Reserve Insurance Co.*, 299 So.2d 661 (Fla. 1st DCA 1974), *cert denied*, 308 So.2d 103 (Fla. 1975); *Reyes v. Banks*, 292 So.2d 39 (Fla. 4th DCA 1974). One district court judge suggested the legislature revisit the statute because it encouraged litigation. *State Farm Mutual Automobile Insurance Co. v. Mance*, 292 So.2d 52 (Fla. 3d DCA 1974) (Barkdull, J., concurring). We held that paragraphs (a) and (b) were repugnant to each other. *Williams v. Gateway Insurance Co.*, 331 So.2d 301 (Fla. 1976).
>
> In 1976 the legislature revamped this subsection to take care of these problems by passing the current provision. Ch. 76-266, § 4, Law of Fla. Now insurers are no longer entitled to reimbursement of any personal injury payments made to injured persons. To prevent the injured persons from receiving double recovery, the legislature has provided that any PIP benefits they have received from their insurers will be set off from the amount they are entitled to recover from the tortfeasors. Although this provision primarily benefits the tortfeasor, it is in keeping with the "no-fault" concept of the Florida Automobile Reparations Reform Act. The benefits obtained by the tortfeasors will enure to their insurance carriers. Supposedly these benefits will eventually be shared by all carriers without the need of litigation. *Lee and Polk, Insurance*, 31 U.Miami L.Rev. 1061, 1071-73 (1977). This should result in lower premiums.
>
> Purdy, 1327-1329.

Therefore, the Florida Supreme Court has expressly discussed the history of the statute, the manner in which the PIP set-off is to be applied, and held the statute is constitutional.

It should be expressly noted that the Supreme Court, in

discussing how the statute is to be applied, stated that there is a set-off for all PIP benefits received, and nowhere stated that the amount was reduced by the plaintiff's comparative negligence.

Therefore, the Purdy decision by the Florida Supreme Court is conclusive of the issue involved on this appeal, i.e., there is a set-off for all of the medical benefits received.

Litigation of Equitable Distribution of PIP Benefits

It is noteworthy that although the provision providing for equitable distribution of PIP benefits was only in effect for four years, it nonetheless spawned at least 31 appellate decisions contesting the amount of equitable distribution. State Farm Automobile Insurance Company v. Hauser, 281 So. 2d 563 (Fla. 3d DCA 1973); Protective National Insurance Company of Omaha, 287 So. 2d 362 (Fla. 3d DCA 1973); Reyes v. Banks, 292 So. 2d 39 (Fla. 4th DCA 1974); State Farm Mutual Automobile Insurance Company v. Mance, 292 So. 2d 52 (Fla. 3d DCA 1974); Liberty Mutual Insurance Company v. Guillet, 294 So. 2d 1 (Fla. 3d DCA 1974); Johnson v. State Farm Mutual Automobile Insurance Company, 294 So. 2d 2 (Fla. 3d DCA 1974); Williams v. Gateway Insurance Company, 294 So. 2d 422 (Fla. 3d DCA 1974); Catches v. Government Employees Ins. Co., 294 So. 2d 116 (Fla. 1st DCA 1974); Gateway Insurance Company v. Lymus, 295 So. 2d 326 (Fla. 3d DCA 1974); Hartford Accident & Indemnity Company v. Diaz, 296 So. 2d 504 (Fla. 3d DCA 1974); Herrera v. Gosnell, 297 So. 2d 876 (Fla. 4th DCA 1974); White v. Reserve Insurance Company, 299 So. 2d 661 (Fla. 1st DCA

1974); Unigard Insurance Company v. Davis, 299 So. 2d 667 (Fla. 1st DCA 1974); Hartford Accident & Indemnity Company v. Orlow, 300 So. 2d 36 (Fla. 3d DCA 1974);
Central National Insurance Company v. Fernandez, 307 So. 2d 906 (Fla. 3d DCA 1975); American Fire and Casualty Company v. Oller, 313 So. 2d 67 (Fla. 4th DCA 1975); Liberty Mutual Insurance Company v. Avila, 317 So. 2d 784 (Fla. 3d DCA 1975); State Farm Mutual Automobile Insurance Company v. Gordon, 319 So. 2d 36 (Fla. 1st DCA 1975); State Farm Mutual Automobile Insurance Company v. Benton, 322 So. 2d 618 (Fla. 3d DCA 1975); Long Island Insurance Company v. Stuckey, 327 So. 2d 835 (Fla. 3d DCA 1976);
Williams v. Gateway Insurance Company, 331 So. 2d 301 (Fla. 1976); Williams v. Gateway Insurance Company, 336 So. 2d 402 (Fla. 3d DCA 1976); Sanchez v. Travelers Indemnity Company of America, 336 So. 2d 676 (Fla. 3d DCA 1976); Creel v. Government Employees Insurance Company, 336 So. 2d 1170 (Fla. 1976); Stonewall Insurance Company v. Valbuena, 344 So. 2d 603 (Fla. 3d DCA 1977); Witko v. Liberty Mutual Insurance Company, 348 So. 2d 52 (Fla. 4th DCA 1977); Bennett v. Stonewall Insurance Company, 348 So. 2d 680 (Fla. 3d DCA 1977); Cavalier Insurance Corporation v. Schy, 350 So. 2d 569 (Fla. 3d DCA 1977); Kalil v. Zuber, 369 So. 2d 445 (Fla. 3d DCA 1979); Atkins v. Harris, 370 So. 2d 852 (Fla. 3d DCA 1979); Apodaca v. Old Security Insurance Company, 389 So. 2d 320 (Fla. 3d DCA 1980).

This list comprises only appellate cases, and is an indication of the massive amount of trial court litigation generated to determine the equitable distribution of PIP benefits of $10,000 or

less.

Therefore, in view of this massive litigation which was caused by this equitable distribution provision, the legislature decided to amend the statute to abolish the equitable distribution provision, and replace it with a set-off for PIP benefits received.

Legislative History

The original version of the No-Fault Statute provided that the PIP carrier would have a right of equitable distribution from the tort carrier, based on a system of equitable distribution similar to that involved in workers' compensation. The statute required the PIP carrier to file a motion for equitable distribution, and the court would determine the amount the PIP carrier would recoup, less the pro rata share of court costs expended by the plaintiff in the prosecution of the tort suit, including a reasonable attorney's fee for the plaintiff's attorney. The original version of the statute reads as follows:

> (3) INSURER'S RIGHTS OF REIMBURSEMENT AND INDEMNITY -
>
> (a) No subtraction from personal protection insurance benefits will be made because of the value of a claim in tort based on the same bodily injury, but after recovery is realized upon such a tort claim, a subtraction will be made to the extent of the recovery, exclusive of reasonable attorneys' fees and other reasonable expenses incurred in effecting the recovery, but only to the extent that the injured person has recovered said benefits from the tort-feasor or his insurer or insurers. If personal protection insurance benefits have already been received, the claimant shall repay to the insurer or insurers, out of the recovery, a sum equal to the benefits received, but not more than the

recovery, exclusive of reasonable attorneys' fees and other reasonable expenses incurred in effecting the recovery, but only to the extent that the injured person has recovered said benefits from the tort-feasor or his insurers or insurer. The insurer or insurers shall have a lien on the recovery of this extent. No recovery by an injured person or his estate for loss suffered by him will be subtracted in calculating benefits due a dependent after the death, and no recovery by a dependent for loss suffered by the dependent after the death will be subtracted in calculating benefits due the injured person except as provided in paragraph (1)(c).

(b) The insurer shall be entitled to reimbursement of any payments made under the provisions of this subsection, based upon such equitable distribution of the amount recovered as the court may determine, less the pro rata share of all court costs expended by the plaintiff in the prosecution of the suit to recover such amount against a third-party tortfeasor, including a reasonable attorney's fee for the plaintiff's attorney. The proration of the reimbursement shall be made by the judge of a trial court handling the suit to recover damages in the third-party action against the tortfeasor upon application therefor and notice to the carrier.

(c) A personal protection insurer with a right of reimbursement under this section, if suffering loss from inability to collect such reimbursement out of a payment received by a claimant upon a tort claim, is entitled to indemnity from one who, with notice of the insurer's interest, made such a payment to the claimant without making the claimant and the insurer joint payees as their interests may appear, or without obtaining the insurer's consent to a different method of payment.

(d) In the event an injured party or his legal representative is entitled to bring suit against a third party tort-feasor under the provisions of § 627.737 and fails to bring such suit against such third party tort-feasor within one year after the last payment of any benefits under subsection (1), the insurer of

> such injured party, upon giving 30 days' written notice to such injured party, shall have the right to bring suit against such third party, in its own name or in the name of the injured person or his legal representative, to recover the amount of the benefits paid pursuant to the provisions of this section to or for the benefit of such injured person. However, the prosecution or settlement of such suit without the consent of the injured person or his legal representative shall be without prejudice to such person.

Concern was expressed because this statute required extensive litigation in order for the trial judge to determine the amount of equitable distribution, and the statute therefore was amended in 1976 to its current form. The legislative history of Ch. 76-266 was obtained from the Florida State Archives and was filed in this Court with a "Notice of Filing," dated July 16, 2003. The legislative history discusses the dissatisfaction with the prior law, which required a "complicated system of equitable distribution," and therefore changed the process to the present system. The legislative history is numbered, and the following are excerpts from the legislative history along with the page number:

March 11, 1976

No-Fault Bill #1

SUMMARY

Take Off Changes:

> The reduction of benefits returned to the 1st party carrier by the amount of attorney's fees and costs incurred in obtaining a judgment is deleted. Equitable distribution is deleted. The result is that when an insured receives PIP benefits and then obtains a judgment based on a tort claim, the insured must return the total

amount of benefits received to the 1st party carrier and such carrier shall have a lien on the recovery to this extent.

(pp. 85-86).

* * *

June 1, 1976

Summary of the Amendment by Representative Brown to CS/HS 2825.

> In the event the insured recovers personal injury protection benefits and damages paid by said benefits in tort the jury will be notified of this fact and expected to react accordingly in adjusting the amount of the recovery.
>
> (p. 5; 89)

* * *

CONFERENCE COMMITTEE REPORT ON CS for HB's 2825, 3042, 3043, 3044, 3155

Tallahassee, Florida
June 4, 1976

The Honorable Dempsey J. Barron
President of the Senate

The Honorable Donald L. Tucker
Speaker, House of Representatives

Sirs:

Your conference committee on the disagreeing votes of the two Houses on Senate amendments to CS for HB's 2825, 3042, 3043, 3044, 3155, same being:

> ...providing that a claimant in any tort claim for which personal injury protection benefits have been paid shall have no right to recover in tort any damages for personal injury protection benefits paid.
>
> (p. 15).

* * *

MOTOR VEHICLE INSURANCE CONCEPTS

I. PROPOSED 1976 AUTOMOBILE REPARATIONS REFORM:

g. Require that any judgement be offset by collateral sources.

II. ADD ON-TAKE OFF SYSTEM OF NO-FAULT:

a. No apportionment of attorney fees or equitable distribution.

(p. 57).

* * *

SUMMARY OF THE NO-FAULT AMENDMENT

Subsection (3) states that PIP benefits whether paid or payable, are not recoverable in tort.
(p. 67).

* * *

June 8, 1976

SUMMARY
CS/HB 2825 (Conference Committee on No-Fault)

Section 4. Amends § 627.736(2), (3), (6) and (7) tolling the 30 day PIP payment period when certain exclusions are likely to apply, requiring that special damages awarded in a judgment be reduced to the extent such damages were paid by PIP, providing for a sworn medical statement relating to PIP billings, and providing that notice to an insurer of the existence of a claim shall not be unreasonably withheld; language relating to equitable distribution is deleted.
(p. 8)

* * *

MOTOR VEHICLE INSURANCE
Florida Laws 72-266, effective October 1, 1976 applies to all claims arising out of accidents occurring on or after said date.

D. INSURED'S RIGHT TO RECOVERY OF SPECIAL

DAMAGES IN TORT CLAIMS.

1. The plaintiff shall have no right to recover in tort any damages for which PIP benefits are paid or payable. The plaintiff may prove all of his special damages notwithstanding this limitation, but if special damages are introduced into evidence, the trier of facts shall not award damages for PIP benefits paid or payable. In all cases where the jury is required to fix damages, the court shall instruct the jury that the plaintiff shall not recover special damages for PIP benefits paid or payable.
§ 627.736 (3)

2. No insurer shall have a lien on any recovery in tort.
§ 627.736 (3)

3. Equitable distribution language is deleted.
§ 627.736 (3).

(pp. 10-11).

* * *

June 8, 1976

SUMMARY
CS/HB 2825 (Conference Committee on No-Fault)

Section 4. Amends § 627.736(2), (3), (6) and (7)...language relating to equitable distribution is deleted.
(p. 69).

* * *

CS/HB 2825, 3042, 3043, 3044, 3155

A bill to be entitled an act relating to liability and insurance therefor;...providing that when a recovery in tort is realized any personal injury protection benefits must be returned in full without a reduction for attorney fees to the first party carrier; deleting language relating to equitable distribution;

(p. 71).

The initial draft of the statute, showing the portion that was ultimately deleted before passage of the amendment, is at page 65:

> (3) INSURER'S RIGHTS OF REIMBURSEMENT AND INDEMNITY.--
> (a) No subtraction from personal protection insurance benefits will be made because of the value of a claim in tort based on the same bodily injury, but after recovery is realized upon such a tort claim, a subtraction will be made to the extent of the recovery, ~~exclusive of reasonable attorneys' fees and other reasonable expenses incurred in effecting the recovery~~, but only to the extent that the injured person has recovered said benefits from the tort- feasor or his insurer or insured. If personal protection insurance benefits have already been received, the claimant shall repay to the insurer or insurers, out of the recovery, a sum equal to the benefits received, but not more than the recovery, ~~exclusive of reasonable attorneys' fees and other reasonable expenses incurred in effecting the recovery~~, but only to the extent that the injured person has recovered said benefits from the tort-feasor or his insurers or insurer. The insurer or insurers shall have a lien on the recovery to this extent. No recovery by an injured person or his estate for loss suffered by him will be subtracted in calculating benefits due a dependent after the death, and no recovery by; a dependent for loss suffered by the dependent after the death will be subtracted in calculating benefits due the injured person ~~except as provided in paragraph (4)(e)~~.
>
> ~~(b) The insurer shall be entitled to reimbursement of any payments made under the provisions of this subsection, based upon such equitable distribution of the amount recovered as the court may determine less the pro rata share of all~~

~~court costs expended by the plaintiff in the prosecution of the suit to recover such amount against a third party tort-feasor, including a reasonable attorney's fee for the plaintiff's attorney. The proration of the reimbursement shall be made by the judge of a trial court handling the suit to recover damages in the third-party action against the tort-feasor upon application therefor and notice to the carrier~~.

(c) A personal protection insurer with a right of reimbursement under this section, if suffering loss from inability to collect such reimbursement out of a payment received by a claimant upon a tort claim, is entitled to indemnity from one who, with notice of the insurer's interest, made such a payment to the claimant without making the claimant and the insurer joint payees as their interests may appear, or without obtaining the insurer's consent to a different method of payment.

(d) In the event an injured party or his legal representative is entitled to bring suit against a third party tort-feasor under the provisions of § 627.737 and fails to bring such suit against such third party tort-feasor within one year after the last payment of any benefits under subsection (1), the insurer or such injured party, upon giving 30 days' written notice to such injured party, shall have the right to bring suit against such third party, in its own name or in the name of the injured person or his legal represent- ative, to recover the amount of the benefits paid pursuant to the provisions of this section to or for the benefit of such injured person. However, the prosecution or settlement of such suit without the consent of the injured person or his legal representative shall be without prejudice to such person.

(pp. 75-76).

* * *

SUMMARY OF NO-FAULT CONFERENCE COMMITTEE REPORT (CS/HS 2825)

June 8, 1976

III. PERSONAL INJURY PROTECTION BENEFITS (PIP):

> B. When an injured person sues for damages in a tort action, he may plead and prove all his special damages (including those for which PIP payments have been or will be made), but he may not recover them again in the suit. If there is a jury trial, the jury will be instructed that they may not award any damages for which PIP benefits have been paid or are currently payable. Under present law, there exists a complicated system of equitable distribution of PIP benefits recovered in tort.
>
> (p. 92).

* * *

June 8, 1976

MOTOR VEHICLE INSURANCE

Florida Laws 76-266, effective October 1, 1976 applies to all claims arising out of accidents occurring on or after said date.

D. INSURED'S RIGHT TO RECOVERY OF SPECIAL DAMAGES IN TORT CLAIMS.

> 1. The plaintiff shall have no right to recover in tort any damages for which PIP benefits are paid or payable. The plaintiff may prove all of his special damages notwithstanding this limitation, but if special damages are introduced into evidence, the trier of facts shall not award damages for PIP benefits paid or payable. In all cases where the jury is required to fix damages, the court shall instruct the jury that the plaintiff shall not recover special damages for PIP benefits paid or payable.
>
> § 627.736(3)

2. No insurer shall have a lien on any recovery in tort.

§ 627.736(3)

3. Equitable distribution language is deleted.

§ 627.736(3)

(p. 95-96).

* * *

Summary of No-Fault Conference made a report (CS/HB2825)

July 8, 1976

III. Personal Injury Protection Benefits (PIP):

B. When an injured person sues for damages in a tort action, he may plead and prove all his special damages (including those for which PIP payments have been or will be made), but he may not recover them again in the suit. If there is a jury trial, the jury will be instructed that they may not award any damages for which PIP benefits have been paid or are currently payable. Under present law, there exists a complicated system of equitable distribution of PIP benefits recovered in tort.

(p. 2)

In other words, the legislative history is clear that the initial concept of the amendment was to simply delete the provisions relating to equitable distribution, and instead provide that the tortfeasor or plaintiff must repay the full amount of PIP benefits to the PIP carrier. **However, when the amendment was passed, instead, it simply provided that the PIP carrier would not be reimbursed for the amount recovered, but it would be set-off from the plaintiff's**

recovery against the tortfeasor.

Rules of Statutory Construction

In reviewing the interpretation of the statute, the rules of statutory construction must be borne in mind.

While legislative intent controls construction of statutes in Florida, that intent is determined primarily from the language of the statute. St. Petersburg Bank & Trust Co. v. Hamm, 414 So. 2d 1071 (Fla. 1982); Opperman v. Nationwide Mutual Fire Insurance Company, 515 So. 2d 263 (Fla. 5th DCA 1987). The plain meaning of the statutory language is the first consideration. St. Petersburg, 1071; Opperman, 266. When, as here, the language of a statute is clear and unambiguous and conveys a clear and definite meaning, there is no occasion for resorting to the rules of statutory construction; the statute must be given its plain and obvious meaning. Opperman, 266; Holly v. Auld, 450 So. 2d 217 (Fla. 1984). The legislative intent is clearly to prevent a double recovery of medical and loss wage payments. Further, there is no language in the statute which says that only the percentage of PIP payments reflecting the defendant's portion of fault, are set-off.

A court must follow the literal and plain meaning of the language of a statute, unless such an interpretation would lead to an absurd or illogical result. St. Petersburg, 1073. Here, the plain meaning of the statute, supports the defendant's position. The plaintiff's interpretation would lead to the opposite result, and an illogical result, since it would encourage the plaintiff to receive unnecessary medical treatment, to inflate medical bills, and to

litigate a case, in order to receive a double recovery of the medical payments.

Florida courts are bound by the definite phraseology in statutes, and are to give effect to every clause of a statute. Florida State Racing Commission v. Bourquardez, 42 So. 2d 87, 88 (Fla. 1949); State ex rel. City of Casselberry v. Mager, 356 So. 2d 267, 269 (Fla. 1978).

The law clearly requires that the legislative intent be determined primarily from the language of the statute, because a statute is to be taken, construed and applied in the form enacted. Egger v. Egger, 506 So. 2d 1168 (Fla. 3d DCA 1987); Sailboat Apartment Corp. v. Chase Manhattan Mortgage and Realty Trust, 363 So. 2d 564 (Fla. 3d DCA 1978); State v. Dalby, 361 So. 2d 215 (Fla. 2d DCA 1978). The reason for this rule is that the legislature is presumed to know the meaning of words, and to have expressed its intent by the use of the words found in the statute. Here, the legislative intent clearly is to limit litigation.

It is also a general principle of statutory construction, that the mention of one thing, implies the exclusion of another. Egger, 1168. Hence, where a statute enumerates the things on which it is to operate, it is to be construed as excluding from its operation all those not expressly mentioned. Ideal Farms Drainage Dist. v. Certain Lands, 154 Fla. 554, 19 So. 2d 234 (1944).

Where words of a statute are clear and unambiguous, judicial interpretation is not appropriate, to displace the expressed intent. Citizens of the State of Florida v. Public Service Commission, 435

So. 2d 784 (Fla. 1983); Egger, 169. In Holmes v. Blazer Financial Services, Inc., 369 So. 2d 987 (Fla. 4th DCA 1979), the court agreed that Florida courts of appeal, are bound to give effect to clear words the legislature has chosen to use in a statute. Egger, 1169. Also the courts will not depart from such a construction, unless it is clearly unauthorized or erroneous. PW Ventures, Inc. v. Nichols, 533 So. 2d 281, 283 (Fla. 1988); Gay v. Canada Dry Bottling Co. of Florida, 59 So. 2d 788 (Fla. 1952). There is nothing erroneous in reading and applying the clear language of the statute such that, all PIP payments are set-off from the judgment. There simply is no language in the statutes which can be construed to mean that only the defendant's percentage of negligence as applied to the PIP payments, is set-off. Such a construction would be erroneous and contrary to the legislative intent to limit litigation.

Many other cases have applied these rules of statutory construction. Florida Birth-Related Neurological Injury Compensation Association v. Florida Division of Administrative Hearings, 686 So. 2d 1349 (Fla. 1997)(It is a fundamental rule of statutory construction that legislative intent is the polestar by which the court must be guided, in construing enactments of the legislature); State v. Dugan, 685 So. 2d 1210 (Fla. 1996)(when the language of a statute is clear and unambiguous, the court must derive the legislative intent from the words used, without involving rules of construction, or speculating as to what the legislature intended); Miele v. Prudential-Bache Securities, Inc., 656 So. 2d 470 (Fla. 1995)(legislative intent must be determined primarily from the

language of the statute); Zuckerman v. Hofrichter & Quiat, P.A., 646 So. 2d 187 (Fla. 1994)(courts need not resort to rules of construction when the words of a statute are clear, and the legislative intent is manifest); Zuckerman v. Alter, 615 So. 2d 661 (Fla. 1993)(where the language of a statute is clear and unambiguous, the legislative intent must be derived from the words used, without involving rules of construction or speculating as to what the legislature intended); Aetna Casualty & Surety Company v. Huntington National Bank, 609 So. 2d 1315 (Fla. 1992)(legislative intent must be determined primarily from the language of the statute).

The plain meaning of statutory language is the first consideration, where the language is clear and unambiguous; and when it conveys a clear and definite meaning, such as here, there is no occasion to resort to rules of statutory construction, because the statute must be given its plain and obvious meaning. Holly v. Auld, 450 So. 2d 217 (Fla. 1984); Barnett Bank of South Florida v. State Department of Revenue, 571 So. 2d 527 (Fla. 3d DCA 1990)(the legislative intent and policy concerns controls construction of statutes and the determination as to the intent of the legislature is based on the plain and ordinary meaning of the language used in the statute itself); Board of County Commissioners of Monroe County v. Department of Community Affairs, 560 So. 2d 240 (Fla. 3d DCA 1990)(in construing a statute, courts cannot attribute to the legislature an intent beyond what is expressed).

It is equally well-established that where a statute has clear and unambiguous wording the courts will defer to that clear wording

and are not free to speculate on repercussions. Talat Enterprises, Inc. v. Aetna Life & Casualty Company, 952 F.Supp. 773 (N.D. Fla. 1996).

There simply is no phrase in the statute to support a holding that only a percentage of the PIP payments are to be set-off, as opposed to the entire amount of PIP payments received. Further, the intent of the legislature is clear, namely to avoid a double recovery of medical and lost wage payments. Therefore, this Honorable Court should reverse this case, and clarify the law of Florida, that 100% of PIP payments received are set-off from a verdict.

CONCLUSION

The decision of the First District in this case is in express and direct conflict with the decision of the Fifth District in Assi v. Florida Auto Auction of Orlando, Inc., supra, and the decision of the Florida Supreme Court in Rollins v. Pizzarelli, supra.

The law should be clarified that there is a set-off for all PIP benefits paid or payable, without any reduction for the comparative negligence of the plaintiff. This is in clear accord with the legislative intent of avoiding duplicate recovery, of avoiding litigation in order to create a double recovery of PIP benefits or medical payments, and in accord with the legislative philosophy of avoiding inflation of medical bills in order to create a double recovery.

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By: _____
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was mailed this 21st day of July, 2003 to:

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CERTIFICATION OF TYPE

It is hereby certified that the size and type used in this Brief is 12 point Courier, a font that is not proportionately spaced.

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INDEX TO PETITIONER'S APPENDIX

Pages