

IN THE SUPREME COURT OF FLORIDA

CASE NO. SCO4-  
DCA CASE NO. 4D03-3139

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SHIRLEY SCHWARTZ, etc.,

Petitioner,

vs.

USAA CASUALTY INSURANCE COMPANY,

Respondent..

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On Discretionary Review From  
The District Court Of Appeal, Fourth District, State of Florida

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**RESPONDENT'S BRIEF ON JURISDICTION**

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## **STATEMENT OF THE CASE AND OF THE FACTS**

The entire Opinion of the Fourth District Court of Appeal in the case below is as follows:

“Affirmed. *See Malu v. Security Nat’l Ins. Co.*, 29 Fla. L. Weekly D1239 (Fla 4<sup>th</sup> DCA May 21 2003).”

### **ARGUMENT**

AS STATED BY PETITIONER:

“THE DISTRICT COURT’S DECISION EXPRESSLY AND DIRECTLY CONFLICTS WITH *HUNTER V. ALLSTATE INS. CO.*, 498 So.2d 514 (Fla 5<sup>th</sup> DCA 1986).”

This case is one of a number of cases which have all held the same thing, that under Florida’s No Fault statute insurers do not owe payment for automobile transportation expenses to the doctor’s office, hospital, or other place of treatment, under personal injury protection benefits pursuant to §627.736, Florida Statutes. In addition to the case at bar, cases so holding include *Malu v. Security National Ins. Co.*, 848 So.2d 373 (Fla. 4<sup>th</sup> DCA 2003); *Padilla v. Liberty Mutual*. 870 So.2d 827 (Fla 3<sup>rd</sup> DCA 2003); and *Gaetan v. Geico*, 854 So.2d 214 (Fla 3<sup>rd</sup> DCA 2003).

The only case to the contrary is an old Fifth District Court of Appeal case, *Hunter v. Allstate*, 498 So.2d 514 (Fla 5<sup>th</sup> DCA 1986). This court has granted review of *Malu v. Security National Ins. Co.*, Case No. SC03-1327 and *Padilla v.*

*Liberty Mutual*, Case No. SC03-1432. Should this court affirm *Malu* and *Padilla*, there would be no need for this court to accept jurisdiction in the case at bar.

**CONCLUSION**

As this court has the issues presented in this appeal under review, should those cases under review, Case No. SC03-1327 and Case No. SC03-1432, be affirmed, nothing would be accomplished by granting jurisdiction for review of the Fourth District Court of Appeal's decision in the case at bar.

Respectfully Submitted,

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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a copy of the foregoing has been furnished by mail to John G. Crabtree, Esq., 328 Crandon Blvd., #225, Key Biscayne, Fl 33149, Edward H. Zebersky, Esq., 4000 Hollywood Blvd., #400 No., Hollywood, Fl 33021, Jeffrey M. Liggio, Esq., The Barristers Bldg., #3-B, 1800 Old Okeechobee Road, #200, 1615 Forum Place, West Palm Beach, Fl 33401 and Glenn Klausman, Esq., 890 N. State Road, Altamonte Springs, Fl 32714 this 5<sup>th</sup> day of August, 2004.

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JEFFREY R. FULLER

**CERTIFICATE OF COMPLIANCE**

I HEREBY CERTIFY that the foregoing Initial Brief of Appellant satisfies the requirements of Rule 9.100(1) and 9.210(a)(2); Florida Rules of Appellate Procedure.

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JEFFREY R. FULLER