IN THE SUPREME COURT OF FLORIDA

ALLSTATE INSURANCE COMPANY,
Petitioner/Cross-Respondent

vs.

Case Nos: SC05-435
SC05-545

HOLY CROSS HOSPITAL, INC.,
Respondent/Cross-Petitioner

CONSOLIDATED

Lower Tribunal Nos.:
Case No: 4D03-4534
Case No: 4D03-4537

ON APPEAL FROM THE FOURTH DISTRICT COURT OF APPEALS

AMICUS BRIEF OF THE FLORIDA INSURANCE COUNCIL, INC. IN SUPPORT OF PETITIONER/CROSS-RESPONDENT ALLSTATE INSURANCE COMPANY AND ALLSTATE INDEMNITY COMPANY

FILED WITH CONSENT OF ALL PARTIES

Peter J. Valeta
Florida Bar No. 327557
Meckler, Bulger & Tilson LLP
123 North Wacker Drive
Suite 1800
Chicago, IL 60606
(312) 474-7895

ATTORNEYS FOR AMICUS CURIAE
FLORIDA INSURANCE COUNCIL, INC.

TABLE OF CONTENTS **Page**

TABLE OF CITATIONS

State Cases **Page**

State Statutes

STATEMENT OF INTEREST OF AMICUS CURIAE

This Brief is submitted by the Florida Insurance Council, Inc. ("FIC") as Amicus Curiae, in support of the position of Petitioners/Cross-Respondents, Allstate Insurance Company and Allstate Indemnity Company (collectively "Allstate"). FIC was established in 1962. It is Florida's largest not-for-profit insurance trade association. The FIC represents 42 insurers' groups consisting of 245 insurance companies, which write over $20 billion a year in premium volume and provide all lines of coverage. The FIC represents the insurance community and advocates for common sense programs and policies that create greater competition, encourage innovation, and benefit Florida insurance consumers.

This appeal relates to Personal Injury Protection ("PIP") and a conflict among the District Courts of Appeal regarding agreements between PIP insurers and networks of healthcare providers (referred to generally hereinafter as "Network Agreements"). PIP is a mandatory coverage under automobile insurance policies issued by FIC's members in Florida. As such, many of FIC's members have serious interests that would be affected by this decision because it pertains to a broad-based program related to PIP coverage.

In *Nationwide Mut. Fire Ins. Co. v. Central Florida Physiatrists, P.A.*, 851 So. 2d 762 (Fla. 5th DCA 2003), the Fifth District ruled that § 627.736(10), Fla. Stat., prohibited PIP insurers from contracting with provider networks to obtain

access to providers' agreed-upon rates for services paid by PIP benefits. Thereafter, in *Nationwide Mut. Ins. Co. v. Jewell*, 862 So. 2d 79, 86 (Fla. 2d DCA 2003), the Second District held that § 627.736(10) did not prohibit such Network Agreements.[1] In the instant matter, the Fourth District aligned itself with the *Jewell* court, also holding that § 627.736(10) did not prohibit such Network Agreements and certifying the conflict between its decision and *Central Florida Physiatrists*.

This appeal directly affects amounts of PIP benefits available to Florida insureds. Under Network Agreements, insurers pay medical bills for services rendered to PIP claimants based upon reduced rates that health care providers have contractually agreed to accept as reasonable. This results in an increase in available PIP benefits for claimants in many situations. First, because the amount paid for services is reduced, more PIP benefit dollars remain available for payment of other additional services. Also, because the amount charged for a given medical bill is reduced, the amount of a claimant's 20% copay share of those medical bills is similarly reduced.

The amount of available PIP benefits to PIP claimants in Florida has become increasingly important in recent years. The Florida Senate Committee on Banking

[1] The Second DCA certified the conflict between its decision and *Central Florida Physiatrists.* However, before this Court ruled on the petitions to appeal in that case, the parties dismissed those appeals pursuant to settlement.

and Insurance recently noted that the average Florida PIP claim has risen 31.4 percent over the last five years from $5,333 to $7,009, resulting in an effective decrease in PIP benefits available to Florida PIP claimants. Report on Florida's Motor Vehicle No-Fault Law, Report No. 2006-102, November, 2005, pp. 53-54.

FIC files this *amicus curiae* brief because many Florida automobile insurers have used or are using similar Network Agreements in paying PIP benefits. Many of FIC's members have been involved in thousands of lawsuits across Florida challenging insurers' rights to use such Network Agreements under Section 627.736(10). FIC seeks to support Allstate's position in this appeal because the Network Agreements provide significant benefits to Florida insureds. The conflict between the decision of the Fourth District below (and the Second District's *Jewell* decision) and the Fifth District's decision in *Central Florida Physiatrists* should be resolved in favor of the better-reasoned *Jewell* and *Holy Cross* decisions to clarify once and for all that insurers can contract with provider networks to obtain the benefits of agreed rates for medical treatment, increasing the available amount of PIP benefits for Florida insureds.

SUMMARY OF ARGUMENT

Holy Cross Hospital, Inc. ("Holy Cross") voluntarily entered into an agreement with Beech Street Corporation ("Beech Street"), to provide medical services to patients insured under policies issued by insurers who contracted with

Beech Street at specified rates listed in a fee schedule. Holy Cross contracted to accept the amounts listed in the contract as full payment for its services.

Allstate entered into a Network Agreement with Beech Street to allow Allstate PIP insureds access to the agreed-upon rates for medical providers participating in the Beech Street network, which included Holy Cross. Allstate paid PIP benefits for the treatment provided to its insureds by Holy Cross at those agreed-upon rates, based on Allstate's agreement with Beech Street.

Holy Cross contends that Allstate's Network Agreement with Beech Street violated Fla. Stat. Section 627.736(10) ("Subsection (10)"). The Trial Court held, based on *Central Florida Physiatrists*, that Allstate's agreement with Beech Street violated Subsection (10), ruling that the only agreements insurers could enter into with regard to PIP provider rates are those defined in Section 627.736(10). The Fourth District reversed, based on the Second District's *Jewell* decision. *Allstate Ins. Co. v. Holy Cross Hosp.*, 895 So. 2d 1241 (Fla. 4th DCA 2005), and certified the conflict with *Central Florida Physiatrists*.

By its express language, Section 627.736(10) does not regulate Network Agreements. Network Agreements actually are consistent with the purpose and legislative intent behind Section 627.736(10) and the Florida PIP statute. They do not violate that section, or any other provision of the Insurance Code. Accordingly, this Court should now resolve the conflict among the district courts

of appeal and hold that Section 627.736(10) does not prohibit the use of agreed-upon provider rates under contracts like the Network Agreement between Allstate and Beech Street.

Holy Cross is attempting to use Section 627.736(10) of the Insurance Code, a statute enacted to benefit insureds, in a way that injures insureds and deprives insureds of the benefits intended by the Legislature. Holy Cross should not be permitted to do so.

ARGUMENT

I. SECTION 627.736(10) DOES NOT PROHIBIT INSURERS' CONTRACTS WITH PROVIDER NETWORKS THAT WOULD APPLY CONTRACTUALLY AGREED RATES TO SERVICES COVERED BY PIP BENEFITS.

The plain language of Subsection (10) states that insurers "may" enter into contracts with providers regarding services covered by PIP benefits, and "may provide an option to an insured to use a preferred provider at the time of purchase of the policy for personal injury protection benefits, if the requirements of this subsection are met." It only regulates the issuance of "preferred provider" PIP policies. Network Agreements like the one between Allstate and Beech Street at issue here do not involve the issuance of a "preferred provider policy." They simply establish that the amounts contractually-agreed to by health care providers like Holy Cross will apply to medical services for injured PIP insureds.

Insurers like Allstate are free to contract with provider networks, just as providers like Holy Cross freely contracted with the networks, agreeing to charge lower rates to insured persons. Nothing in Subsection (10) prevents providers from contractually obligating themselves to charge less to particular insureds or groups. Nothing in that statute requires insurers to only contract "directly" with providers or prohibits their contracts with networks.[2] Florida's freedom-of-contract principles, which apply to both PIP and general insurance contracts (*see Green v. Life & Health of America*, 704 So. 2d 1386, 1390 (Fla. 1998); *Nationwide Mut. Fire Ins. Co. v. Mazzarino ex rel. Mazzarino*, 766 So. 2d 446, 449 (Fla. 4th DCA 2000)), and the plain language of the PIP statute compel this conclusion.

The Fourth District below noted that in *Jewell*, the Second District had determined that the language of Subsection (10) "did not limit insurers to entering into only direct contracts with providers…." 895 So. 2d at 1244. It further observed that the *Jewell* Court found that "the first and second sentences [of Subsection (10)] should not be read together so as to permit only those PIP insurers who offer preferred provider policies to enter into contracts with health care providers." *Id.*

Section 627.736(10) is entirely silent with regard to providers' contracts with networks or insurers' contracts with networks, and there is no basis from

[2] Claims by providers that they did not contract to permit insurer Network Agreements for PIP claims are only that --contract claims--not statutory claims under Subsection (10).

which a prohibition of such contractual arrangements can be inferred. Thus, the Second District concluded in *Jewell* that the insurers' asserted contractual basis for paying PPO rates to the providers was "not affected by the provisions of section 627.736(10)," and agreed with the insurers that "the text of neither the no-fault statute nor the PIP policies prohibits the payment of PPO rates by appellants."

> There is no basis in either the specific language of subsection (10) or in any other provision of the no-fault law for concluding that the legislature prohibited the payment of PPO rates by the appellants. The requirements of subsection (10) do not cover what the appellant insurers have done; no other provision of the no-fault law or of the policies issued by the insurers prohibits what they have done.

862 So. 2d at 83. The *Jewell* Court found "subsection (10) does two basic things: (1) it authorizes PIP insurers to enter contractual arrangements for the provision of preferred provider medical services; and (2) it authorizes PIP insurers to issue preferred provider PIP policies, subject to certain conditions and requirements." *Id.* at 83-84. It noted that the "statute does not refer specifically to direct contracts" and legislative intent to exclude contractual arrangements other than direct contracts "is by no means obvious." *Id.* at 84. To the contrary, the Court noted, a "reasonable user" of "the English language would understand the authorization to contract in this context as encompassing contractual arrangements in which an insurer contracts to obtain the service of providers through an intermediary PPO network." *Id.* Consequently, the Court found "the legislature's

express authorization of contracting should not be read to exclude contracting through an intermediary." *Id.*

The *Jewell* Court correctly found that "nothing in the text of Subsection (10) - or any other provision of the no-fault statute - says that an insurer may contract with providers only if the insurer issues preferred provider policies." *Id.* at 85. The Court expressly rejected the providers' contrary argument, stating clearly:

> The argument of the appellee providers thus founders on the clear language of the statutory text. The pertinent words of the statute - "may negotiate and enter into contracts," and "may provide an option to an insured" - are permissive, not prohibitive. There is nothing uncertain or ambiguous about the word "may." The juxtaposition of two permissive provisions ordinarily cannot be understood as establishing a prohibition. "May" plus "may" does not equal "may not."

Id. The *Jewell* Court thus reached the only logical conclusion possible - that "the mandatory provisions of subsection (10) come into play only when an insurer issues a preferred provider PIP policy." *Id.*

The Fourth District below agreed with the analysis and conclusions of the *Jewell* Court and also held that Subsection (10) does not prohibit insurers that have not issued preferred provider policies from contracting to pay providers at reduced, PPO rates. 895 So. 2d at 1294-95. Application of network contractual rates does not violate Section 627.736(10) because there is no preferred provider policy at

issue. Holy Cross' statutory claim is based on the same misconstruction of the language of Section 627.736 as was asserted in *Jewell*.[3]

II. PAYMENT OF PIP BENEFITS UNDER NETWORK AGREEMENTS IS ENTIRELY CONSISTENT WITH THE PIP STATUTE.

Under the Florida PIP statute, insurers are required to pay for "reasonable" medical expenses. Fla. Stat. §627.736(1). The *Jewell* Court logically found that payment by the insurer at the rate which the provider had contractually agreed to accept "is necessarily payment of a 'reasonable amount'" sufficient to satisfy the statute. 862 So. 2d at 83. The Court first pointed out that Section 627.736(5)(a) of the no-fault statute expressly limits providers' charges for services rendered to PIP insureds to "only a reasonable amount." *Id.* at 85-86. According to the *Jewell* Court, it is "obvious" that the "key to compliance [is] the payment of amounts that are reasonable remuneration for the particular services provided." *Id.* at 86. Noting that it is "unreasonable" to read the statute as requiring an insurer to "pay a provider for services at a rate higher than the rate the provider has contractually agreed to accept," the Court expressly held:

---

3 Just as in *Jewell*, the case before this Court involves nothing more than a negotiated fee schedule to be used if the insured elected to treat with a covered provider. Holy Cross contracted with Beech Street to access Allstate's insureds. The Allstate insureds at issue treated with Holy Cross for the injuries they suffered. The insureds are entitled to receive the benefit of the discounted rates, which were agreed upon by Beech Street and Holy Cross before their treatment occurred.

> If a provider has agreed in a valid and enforceable contract to accept payment for services at a particular rate, that rate would be a "reasonable rate for the services ... rendered." . . . Insofar as the provisions of the no-fault law and of the PIP policies are concerned, there is simply no basis for complaining that a payment rate a provider has agreed to accept is inadequate and therefore not reasonable.

Id.

Under the Policy, and consistent with the statute, insureds have the right to receive payment from Allstate of 80% of reasonable expenses charged by a medical provider, for necessary medical treatment, up to the policy limit of $10,000. Nothing about the Network Agreements prevents insurers from satisfying that obligation fully. Indeed, the lower rates agreed to by providers makes more PIP benefits to cover more treatment for the insured, if needed, because the applicable PIP policy limits are exhausted more slowly. They also lower the 20% deductible burden borne by insureds because the injured claimants' 20% share is based on the lower, agreed-upon network rates. The fact that providers are paid at a reduced rate does not violate any provision of the PIP statute.

The *Jewell* Court also affirmatively accepted the proposition that insurers' payment for medical services at the agreed-upon network rates did not contravene either the provisions or intent and purposes of the PIP statute. Rather, the Court

observed that "the insurers have provided a potential benefit to insureds that is entirely consistent with the statutory scheme," *id.* at 83, and expressly stated:

> Any contractual arrangements the insurers have made for paying certain providers at PPO rates have in no way adversely affected the services made available to the insureds under the PIP policies. If an insured used a PPO provider in a PPO network with which the appellant insurer had a contractual relationship, the only impact on the insured would be to save the insured money. Any insured using a PPO provider would have a copayment lower than the copayment that would have been applicable if a non-PPO provider had been used. In addition, since each treatment given by a PPO provider costs less than the same treatment given by a non-PPO provider, more services will be available to the insured within the $10,000 PIP policy limits....

Id. at 86.

The effect of Network Agreements is not only consistent with the PIP statutory scheme, but affirmatively benefits insureds. Accordingly, there is simply no basis for inferring a prohibition of such contracts under Subsection (10).

III. *HOLY CROSS* AND *JEWELL* ARE CONSISTENT WITH GENERALLY APPLICABLE PRINCIPLES OF STATUTORY ANALYSIS AND CONSTRUCTION.

The holdings in *Jewell* and *Holy Cross* below not only comport with the statute's plain language, but are also supported by principles of statutory construction. As the *Jewell* Court recognized, "[i]f the legislature wishes to

prohibit something, it is perfectly capable of saying so." 862 So. 2d at 85.[4] Any other conclusion would ignore the plain language and expand the scope of §627.736(10), Florida Statutes, resulting in "impermissible judicial legislation."[5]

The Florida Legislature did not manifest any intent to prohibit Allstate from contracting outside of the statute for lower rates. The plain language of Section 627.736(10) only applies to **"insurer[s] [who] negotiate and enter into contracts with licensed health care providers** for the benefits described in [that] section." *Jewell*, 862 So. 2d at 85; *see also* § 627.736(10), Fla. Stat. (which provides, in pertinent part, that "[an] insurer may negotiate..."). Where insurers indisputably did not negotiate and/or contract with licensed health care providers for the payment of PIP benefits, but instead contracted with a third party health care management service that, in turn, contracted with a network of health care

---

[4] In order to find a statutory prohibition against these contractual network arrangements, one must, in direct contradiction with the rules of statutory construction, add words that the legislature did not use in Section 627.736(10). *State v. Byars*, 804 So. 2d 336, 338 (Fla. 4th DCA 2001) ("In construing a statute, courts must follow what the legislature has written and neither add, subtract, nor distort the words written."). In fact, one must add language to the effect that "the sole manner in which an insurer may contractually arrange for agreed rates from healthcare providers in connection with PIP benefits is by issuing a preferred provider policy under this section." However, the legislature did just the opposite in Section 627.736(10). That section only states that "[a]n insurer may negotiate and enter into contracts with licensed health care providers for the benefits described in this section." Nothing in this language, or any other language of the statute, mentions any prohibition of other contractual agreements.

[5] *See Martin v. Town of Palm Beach*, 643 So. 2d 112, 115 n.7 (Fla. 4th DCA 1994) (wherein the court refused to recognize an exception to a statute which was not expressly set forth in the statute); *see also Brown v. State*, 629 So. 2d 841, 843 (Fla. 1994) (the Florida Constitution and the Supreme Court of Florida do not allow courts to engage in "judicial legislating"); *State v. Global Communications Corp.*, 622 So. 2d 1066, 1080 (Fla. 4th DCA 1993), *aff'd*, 648 So. 2d 10 (Fla. 1994) ("[i]t is a time-honored principle of Florida law that it is not the role of a court to rewrite a statute").

providers, it necessarily and logically follows that the subject policy and the method used to administer its PIP provisions fall outside the scope of Section 627.736(10).

By enacting Section 627.736(10), the Legislature did not manifest any intent to make that method the exclusive or only means of accomplishing that objective, let alone, expressly prohibit the method used by Allstate. *See* § 627.736(10), Fla. Stat. ("insurer **may** negotiate..."). To the contrary, by expressly making the use of the statutory method permissive, rather than mandatory, the Legislature left open the viability of other methods that satisfy the spirit of the statutory scheme. The plain language of Subsection (10) authorizes insurers to contract with preferred providers using both direct and indirect contractual arrangements. *See Jewell*, 862 So. 2d at 83. The authorization to "enter into contracts with licensed health care providers" is not limited to direct contracts with providers. There is no legislative intent manifest in the language of the enactment to exclude contractual arrangements other than direct contracts. *See id.* at 83-84. Accordingly, there is no reason to read Subsection (10) narrowly as authorizing only direct contracts.

Subsection (10) also does not prohibit insurers that have not issued preferred provider policies from contracting to pay providers at reduced rates. *See id.* Subsection (10)'s requirements apply only to "preferred provider policies" where the insurer offers PIP coverage with an option to use preferred providers at the

time the insured buys a policy. There is no requirement in the statute that all insurers who contract to pay providers at reduced (PPO) rates must issue preferred provider policies. *Id.* at 85. As the *Jewell* Court observed:

> The pertinent words of the statute - 'may negotiate and enter into contracts,' and 'may provide an option to an insured' - are permissive, not prohibitive. There is nothing uncertain or ambiguous about the word 'may.' The juxtaposition of two permissive provisions ordinarily cannot be understood as establishing a prohibition. **'May' plus 'may' does not equal 'may not.'"**

Id. at 85 (emphasis supplied); *see also Dept. of Health & Rehab. Servs. v. Johnson*, 504 So. 2d 424 (Fla. 5th DCA 1987) (use of "may" in a statute denotes a permissive term and not the mandatory connotation of the word "shall").

As concluded by the *Jewell* Court and by the *Holy Cross* Court below, by its terms, therefore, Subsection (10) simply does not apply to Network Agreements.

IV. CONTRACTUAL RATES FOR MEDICAL SERVICES BENEFIT FLORIDA CONSUMERS BY MAXIMIZING PIP COVERAGE; SUBSECTION (10) SUPPORTS THIS ADVANTAGE FOR CONSUMERS AND MUST BE INTERPRETED IN A MANNER THAT PROMOTES CONSUMER BENEFITS.

This Court has mandated that the PIP statute should be construed to give effect to the legislative purpose of providing broad PIP coverage. *Blish v. Atlanta Cas. Co.*, 736 So. 2d 1151, 1155 (Fla. 1999); *Charter Oak Fire Ins. Co. v. Regalado*, 339 So. 2d 277, 279 (Fla. 3d DCA 1976). *See also Dauksis v. State Farm Mut. Auto. Ins. Co.*, 623 So. 2d 455, 457 (Fla. 1993) ("While insurance companies may not provide less uninsured motorist coverage than required by

statute, there is nothing to prevent them from providing broader coverage."). Network Agreements, like Allstate's agreement with Beech Street, fulfill that purpose in several ways.

First, such contracts preserve for each insured an unfettered choice of providers, preserve available coverage benefits, and provide insureds with reduced co-payments.[6] The *Jewell* Court expressly recognized that Network Agreements are entirely consistent with this purpose of the no-fault law:

> If an insured used a PPO provider in a PPO network with which the appellant insurer had a contractual relationship, the only impact on the insured would be to save money. Any insured using a PPO provider would have a copayment lower than the copayment that would be applicable if a non-PPO provider had been used. In addition, since each treatment provided by a PPO provider costs less than the same treatment given by a non-PPO provider, more services will be available within the $10,000 PIP policy limits provider for in section 627.736(1). The appellee providers argue that the appellant insurers have somehow undermined or altered the statutory scheme of the no-fault law. In light of the actual impact on the PIP insureds who may choose to use PPO providers, the appellees' argument rings hollow.

6 The Florida legislature was concerned that insurers might enter into preferred provider contracts with certain providers, and then offer their insureds only policies that would require insureds to receive treatment solely from these preferred providers. While insureds would benefit from reduced charges by providers (and thus reduced co-payments), their choice of providers would be limited. To avoid these possible limits on insureds' choices, Section 627.736(10) provides that an insurer that offers a preferred provider policy should also give insureds the option of a policy that pays for any provider the insured decides to visit.

862 So. 2d at 86. Striking down this program would serve only to deprive insureds of the added PIP coverage benefits they can derive from the Network Agreements.

Second, such Network Agreements also promote the goal of ensuring "swift and virtually automatic payment" of no-fault claims. *See Ivey v. Allstate Ins. Co.*, 774 So. 2d 9, 16 (Fla. 1974). The use of agreed-to fee schedules under the Network Agreements at issue minimizes potential conflicts and litigation concerning the "reasonableness" of a medical provider's charges. It also promotes the intertwined goal of prompt and efficient payment of insurance claims. A contrary decision, on the other hand, will require individual determinations of reasonableness in each case, thus increasing the likelihood of disputes, disagreements and delays over whether a provider's charges are in fact "reasonable."

Third, contrary to the plain language and purpose of the Insurance Code, not only would Holy Cross' claims injure insureds by giving them less medical benefits, but they would encourage breaches of contract. Specifically, under their network contracts, providers have agreed to charge insureds lower rates. In violation of their contracts, the providers now seek to recover more money -- at the expense of the insureds – by invalidating insurers' Network Agreements. The Florida legislature could not possibly have intended such a result.

CONCLUSION

Network Agreements offer lower, agreed-to provider rates to PIP insureds throughout Florida. The validity of these programs impacts virtually all such insureds. If they are upheld and providers are held to their promise not to bill the balance to the patient, all PIP insureds could enjoy reduced rates and enhanced coverage. Insureds' PIP benefits would cover more services within their $10,000 PIP limits and they would have lower out-of-pocket expenses for their 20% co-pay obligation due to the lower network rates for services. The providers' contrary arguments lack merit and, in all events, would lead to loss of the consumer benefits mandated by the Florida legislature.

The Florida Legislature did not intend to limit the benefits of negotiated rates for PIP coverage benefits solely to "formal" PPO programs. Payment under network contracts is not inconsistent with the PIP statute and its public policy because the result is that insureds save money through a reduced copay and have more benefits available within the $10,000 limits. Consumers benefit when: (1) negotiated rates lower costs, allowing PIP benefits to cover more treatment; (2) PIP claimants' 20% co-payment is based on a lower negotiated provider rate; and (3) PIP claimants are not restricted in their choice of providers as they would be under a "formal" PPO arrangement.

As the Fourth District below concluded by agreeing with the Second District in *Jewell*, Holy Cross' claims are contrary to the plain language, legislative history, and underlying purpose of the very statute it seeks to employ as an artifice in order to strike down Allstate's network program. For these and other reasons, as set forth above and also as further articulated in Allstate's Initial Brief, the conflict between the decisions of the *Jewell* and *Holy Cross* Courts with the Second District in *Central Florida Physiatrists* should be resolved in favor of the consumers as the Second and Fourth Districts have determined.

Peter J. Valeta

Peter J. Valeta
Florida Bar No. 327557
Meckler, Bulger & Tilson LLP
123 North Wacker Drive
Suite 1800
Chicago, IL 60606
(312) 474-7895

Attorneys for Amicus Curiae
Florida Insurance Council, Inc.

CERTIFICATE OF SERVICE

I, Peter J. Valeta, an attorney, hereby certify that a true and correct copy of the foregoing Amicus Brief of the Florida Insurance Council, Inc. in Support of Petitioners/Cross-Respondents Allstate Insurance Company and Allstate Indemnity Company has been served upon the following attorneys by depositing the same in the U.S. Mail Chute located at 123 North Wacker Drive, Chicago, Illinois, postage pre-paid, prior to the hour of 5:00 p.m. on this 9th day of January, 2006:

George Vaka
Vaka, Larson & Johnson
One Harbour Place
777 S. Harbour Island Boulevard
Suite 300
Tampa, FL 33602
[Attorneys for Respondent/Cross-Petitioner]

Jack R. Reiter
Adorno & Yoss, P.A.
2601 South Bayshore Drive
Suite 1600
Miami, Florida 33133
[Attorneys for Petitioner/
Cross-Respondent]

Richard C. Godfrey
Andrew A. Kassof
Kirkland & Ellis LLP
Aon Center
200 East Randolph Drive
Chicago, Illinois 60601-6636
[Attorneys for Petitioner/
Cross-Respondent]

_____
Peter J. Valeta

Peter J. Valeta
Florida Bar No. 327557
Meckler Bulger & Tilson LLP
123 North Wacker Drive
Suite 1800
Chicago, IL 60606
(312) 474-7895

Attorneys for Amicus Curiae
Florida Insurance Council

CERTIFICATE OF COMPLAINCE WITH FLA. R. APP. P. 9.210(2)

I, Peter J. Valeta, an attorney, hereby certify that the foregoing Amicus Brief of the Florida Insurance Council, Inc. in Support of Petitioner/Cross-Respondent Allstate Insurance Company and Allstate Indemnity Company complies with the font requirements of Fla. R. App. P. 9.210(2).

Peter J. Valeta

Peter J. Valeta
Florida Bar No. 327557
Meckler, Bulger & Tilson LLP
123 North Wacker Drive
Suite 1800
Chicago, IL 60606
(312) 474-7895

Attorneys for Amicus Curiae
Florida Insurance Council, Inc.