IN THE SUPREME COURT OF FLORIDA

CASE NO.: SC12-650

FROM THE
ELEVENTH COURT OF APPEALS CASE NO.:10-13183-D

MERLY NUÑEZ,

APPELLANT,

vs.

GEICO GENERAL INSURANCE COMPANY,

APPELLEE.

ON REVIEW OF A CERTIFIED QUESTION FROM THE UNITED STATES COURT OF APPEAL FOR THE ELEVENTH CIRCUIT

INITIAL BRIEF OF APPELLANT ON CERTIFIED QUESTION

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STATEMENT OF THE CASE AND FACTS

This appeal arises from an April 3, 2012 opinion from the United States Court of Appeals Eleventh Circuit which certified a question of Florida law to the Florida Supreme Court. The action was initially filed in state court on October 26, 2009 and removed by GEICO on December 4, 2009 to the United States District Court for the Southern District of Florida. (R. 1). On April 13, 2010, the District Court entered a *Final Order of Dismissal* with prejudice (R. 5) on NUNEZ's *Class Action Complaint*. (R. 2). NUNEZ appealed the District Court's ruling to the United States Court of Appeals Eleventh Circuit. (R. 9).

The Appellant is Merly Nunez (hereinafter "Appellant" or "NUNEZ") who, individually and on behalf of the others similarly situated, filed a class action against GEICO GENERAL INSURANCE COMPANY (hereinafter "Appellee" or "GEICO"). NUNEZ sought a determination from the court that GEICO's insurance policy and Florida Statute §627.736 does not permit GEICO to condition payment of statutory Personal Injury Protection (P.I.P.) benefits/coverage on attendance at an EUO and that a failure to attend a unilaterally set EUO, is an insufficient basis to deny P.I.P. benefits under the policy of insurance and/or Florida law. (See Complaint at R. 2).

In response, GEICO moved to dismiss Appellant's *Complaint* on January 7, 2010, alleging that its policy language and Florida law permitted it to require that NUNEZ attend an EUO in order to receive P.I.P. benefits. (R. 3).

NUNEZ filed her *Response to Defendant's Motion to Dismiss and Memorandum of Law* on February 15, 2010 (R. 4), maintaining that the P.I.P. statute and Florida cases interpreting same do not allow the imposition of conditions on coverage not permitted under the P.I.P. statutory scheme. (R. 4). On April 13, 2010, the *Final Order of Dismissal* was entered. (R. 5). NUNEZ then filed her *Motion for Reconsideration of the Final Order of Dismissal With Prejudice and Plaintiff's Motion for Leave to File an Amended Complaint and To Remand Case to State Court*. (R. 6). The *Reconsideration Motion* (R. 6) asserted that a dismissal with prejudice should not be entered because, at the very least, the insurer would have the burden to prove there was an unreasonable refusal by NUNEZ to attend the EUO and that correspondence between NUNEZ and GEICO, after the EUO was demanded, would demonstrate otherwise. (R. 6). NUNEZ further filed a proposed *Amended Complaint* attaching said correspondence as Exhibits. (R. 7). NUNEZ also cited to section 627.418(1), Fla. Stat., and *Diaz-Hernandez v. State Farm Fire & Casualty Ins. Co.*, 19 So.3d 996 (Fla. 3d DCA 2009) for further support of her position that a policy provision cannot lawfully restrict the rights of an insured beyond those provided by statute. (R. 7). The

Order denying the *Motion for Reconsideration* was issued on June 14, 2010. (R. 8). On July 2, 2010, NUNEZ appealed from the *Final Order of Dismissal* with prejudice to the United States Court of Appeals Eleventh Circuit. (R. 9). On April 3, 2012, the United States Court of Appeals Eleventh Circuit issued an opinion certifying the following question to this Honorable Court:

> Whether, under FLA. STAT. § 627.736, an insurer can require an insured to attend an EUO as a condition precedent to recovery of PIP benefits?

(R. 10).

SUMMARY OF THE ARGUMENT

The certified question:

> Whether, under FLA. STAT. § 627.736, an insurer can require an insured to attend an EUO as a condition precedent to recovery of PIP benefits?

should be answered in the negative for several reasons. First, the plain language of Fla. Stat. § 627.736, clearly does not provide for an EUO, as one of the permissible conditions to receiving P.I.P. benefits. "It is an established principle that where the language of a statute is clear and unambiguous and conveys clear and definite meaning, there is no occasion for resorting to the rules of statutory interpretation and construction; the statute must be given its plain and obvious meaning." *Holly v. Auld*, 450 So.2d 217 (Fla.1984).

Second, Fla. Stat. § 627.736 specifically defines all the permissible conditions an insurer may require. Glaringly absent in the statute is any EUO condition. The legislature created various conditions for payment that an insurer may require including a statutory condition to permit a P.I.P. insurer to require an independent medical examination ("IME")--a condition somewhat analogous to an EUO. *See* §627.736(7)(b). The legislature could have included an EUO provision if it desired. Further, it is an axiomatic rule of statutory construction in Florida, that where a statute mentions one thing, it necessarily implies the exclusion of another. This principle has been held applicable to the Florida Insurance Code and

more specifically to P.I.P. *See Indus. Fire & Cas. Ins. Co. v. Kwechin*, 447 So.2d 1337 (Fla. 1983).

Third, this Honorable Court's analysis of the EUO requirement in *Custer Medical Center v. United Automobile Insurance Company*, 62 So.3d 1086 (Fla. 2010), reiterates long-standing precedent which prohibits the imposition of non-statutory conditions on statutorily mandated coverage, such as UM and PIP. *See also Flores v. Allstate Ins. Co.*, 819 So.2d 740, 745 (Fla. 2002) (noting that courts have an obligation to invalidate exclusions on coverage that are inconsistent with the purpose of the statute that mandates the coverage); *Salas v. Liberty Mut. Fire. Ins. Co.*, 272 So. 2d 1, 5 (Fla. 1972) (recognizing that insurance coverage that is a creature of statute is not susceptible to the attempts of the insurer to limit or negate the protection afforded by the law); *Mullis v. State Farm Mut. Auto. Ins. Co.*, 252 So. 2d 229, 232-34 (Fla. 1971) (stating that automobile liability insurance and uninsured motorist coverage obtained to comply with or conform to the law cannot be narrowed by the insurer through exclusions and exceptions contrary to the law). The EUO analysis in *Custer* opinion is also consistent with various long-standing Florida district court decisions rejecting insurers' constant attempts to alter, limit or eliminate its obligation to pay P.I.P claims.

Further, although insurance companies have heavily relied on *Goldman v. State Farm General Ins. Co.*, 660 So.2d 300 (Fla. 4th DCA 1995), in support of insurers being permitted to imposed EUO conditions on coverage, the case was clearly distinguished in *Custer* as not having involved a statutory-created coverage and therefore, inapplicable in the PIP context here. Lastly, the addition of an EUO condition in the new version of the PIP statute during the 2012 legislative session is a clear indication that an EUO provision was never a condition of any prior versions of the statute. Hence, the certified question should be answered in the negative.

ARGUMENT

NUÑEZ submits that the certified question:

> Whether, under FLA. STAT. § 627.736, an insurer can require an insured to attend an EUO as a condition precedent to recovery of PIP benefits?

should be answered in the negative based on the plain language of Florida Statute §627.736, this Court's analysis in *Custer Medical Center v. United Automobile Insurance Company*, 62 So.3d 1086 (Fla. 2010), and consistent and long-standing precedent from this Honorable Court.

I. THE PLAIN LANGUAGE OF §627.736, FLA. STAT. (THE P.I.P STATUTE), REQUIRES THE CERTIFIED QUESTION TO BE ANSWERED IN THE NEGATIVE

In interpreting a statute, Florida law applies the plain meaning rule. "It is an established principle that where the language of a statute is clear and unambiguous and conveys clear and definite meaning, there is no occasion for resorting to the rules of statutory interpretation and construction; the statute must be given its plain and obvious meaning." *Holly v. Auld*, 450 So.2d 217 (Fla.1984); *See also State v. Dugan*, 685 So.2d 1210, 1212 (Fla. 1996) ("When interpreting a statute, courts must determine legislative intent from the plain meaning of the statute."). "As with the interpretation of any statute, the starting point of analysis is the actual language of the statute." *Cont'l Cas. Co. v. Ryan Inc. E.*, 974 So.2d 368, 374 (Fla. 2008); *Freeman v. First Union National Bank*, 865 So.2d 1272, 1276 (Fla. 2004),

citing *Joshua v. City of Gainesville,* 768 So.2d 432, 435 (Fla. 2000). "When a statute is clear and unambiguous, courts will not look behind the statute's plain language for legislative intent or resort to rules of statutory construction to ascertain intent." *Lee Cnty. Electric Coop., Inc. v. Jacobs*, 820 So.2d 297, 303 (Fla.2002).

Indeed, in construing Florida's No-Fault Law, this Honorable Court has declared "[w]here the wording of the [No-Fault] Law is clear and amenable to a logical and reasonable interpretation, a court is without power to diverge from the intent of the Legislature as expressed in the plain language...." *Allstate Ins. Co. v. Holy Cross Hospital, Inc.*, 961 So.2d 328, 334 (Fla. 2007). Courts are "without power to construe an unambiguous statute in a way which would extend, modify, or limit, its express terms or its reasonable and obvious implications. To do so would be an abrogation of legislative power." *Holly v. Auld*, 450 So.2d 217, 219 (Fla. 1984).

II. AN EUO IS NOT A CONDITION PRECEDENT TO P.I.P BENEFITS

A. SECTION 627.736, FLA. STAT., DOES NOT CONTAIN ANY EUO REQUIREMENT AMONG THE STATUTORILY PERMISSIBLE CONDITIONS TO RECEIVING P.I.P BENEFITS

GEICO cannot dispute that §627.736, Fla. Stat., does not contain any language which makes an EUO a condition to the recovery of P.I.P. benefits.

GEICO will undoubtedly argue that an EUO is not specifically prohibited in the P.I.P statute; however, Florida courts have routinely struck insurer-imposed conditions to P.I.P. not provided for in the statute, irrespective of whether or not the condition is specifically prohibited. To infer that a condition is impliedly permitted is contrary to proper statutory interpretation. In Florida, it is an axiomatic rule of statutory construction that where a statute mentions one thing, it necessarily implies the exclusion of another. This principle has been held applicable to the Florida Insurance Code and more specifically to P.I.P. *See Indus. Fire & Cas. Ins. Co. v. Kwechin*, 447 So.2d 1337 (Fla. 1983). Hence, the statute's silence as to an examination under oath while specifically delineating other forms of permissible discovery—must be construed to exclude the examination under oath as a condition precedent to receiving P.I.P benefits pursuant to §627.736.

B. SECTION 627.736, FLA. STAT., DEFINES THE PERMISSIBLE CONDITIONS TO RECOVER P.I.P BENEFITS, NOT ALL POTENTIALLY IMPERMISSIBLE ONES

The P.I.P. statute, specifically §627.736, sets forth various conditions for payment that an insurer may require.[1] In subsection (5)(b), it sets forth certain circumstances under which an insurer may deny payment. Glaringly absent in the statute is any EUO condition. The concept of an EUO cannot be so foreign or remote that the Florida Legislature could not have included such requirement in the

[1] See for example §627.736(4)(a); (6)(a); (6)(b); (6)(c); (7)(a); and (7)(b).

statute if it so desired. Certainly, the legislature was able to create a statutory condition to permit a P.I.P. insurer to require an independent medical examination ("IME")--a condition somewhat analogous to an EUO. *See* §627.736(7)(b). In fact, the legislature was also able to include a provision permitting an insurer to deny further benefits if the insured unreasonably refused to submit to an IME. *See* §627.736(7)(b).

III. THIS COURT'S RECENT ANALYSIS OF THE EUO ISSUE IN *CUSTER* REITERATED LONG-STANDING LEGAL PRECEDENT WHICH PROHIBIT NON-STATUTORY CONDITIONS BEING IMPOSED BY INSURERS ON STATUTORILY-CREATED COVERAGES

Although an EUO is the triggering condition in this case, the broader underlying legal issue is whether an insurer can impose a condition, on **statutorily**-imposed coverage, not contained in the statute. This question was decided by this Honorable Court long before its analysis in *Custer*, which was a reiteration of the long-standing legal precedent regarding the treatment of P.I.P and other statutory imposed coverages, and was not a change of any existing legal principles. Moreover, every time insurers have attempted to limit or negate the protection of statutory imposed coverages, this Honorable Court has invalidated exclusions on coverage that are contradictory with the purpose of the statute that imposes the coverage.

In *Mullis v. State Farm Mut. Auto. Ins. Co.*, 252 So.2d 229 (Fla. 1971), this Court stated that automobile liability insurance and uninsured motorist coverage obtained to comply with or conform to the law cannot be narrowed by the insurer through exclusions and exceptions contrary to the law. In *Mullis*, the insured's son was injured while operating a motorcycle, which was not covered by the policy issued by the insurance company. *Id.* at 231. Said policy included a provision which excluded uninsured motorist coverage for bodily injury to an insured, including a resident of insured's household, if such vehicle was not an insured automobile. *Id.* at 231-232. The insurance company argued that since the motorcycle was not covered by any of the insurance policies issued to the insured, the son was not covered for uninsured motorist benefits. *Id.* This Court declared:

> The public policy of the uninsured motorist statute [now § 627.727(1)] is to provide uniform and specific insurance benefits to members of the public to cover damages for bodily injury caused by the negligence of insolvent or uninsured motorists and such *statutorily fixed* and prescribed protection is not reducible by insurers' policy exclusions and exceptions any more than are the benefits provided for persons protected by automobile liability insurance secured in compliance with the Financial Responsibility Law.
>
> Insurers or carriers writing automobile liability insurance and reciprocal uninsured motorist insurance are not permitted *by law* to insert provisions in the policies they issue that exclude or reduce the liability coverage prescribed *by law* for the class of persons insured thereunder who are legally entitled to recover damages from owners or operators of motor vehicles because of bodily injury.

Mullis, 252 So. 2d at 233-34. This Court went on to hold that the insurance policy

exclusion was contrary to the uninsured motorist statute and that insurance and uninsured motorist coverage obtained to comply with the law cannot be narrowed by an insurer through exclusions/exceptions contrary to the law. *Mullis*, 252 So. 2d at 237-238.

In *Salas v. Liberty Mut. Fire Ins*. Co., 272 So.2d 1 (Fla. 1972), this Court held that an automobile policy provision, excluding uninsured motorist coverage, to the insured, attempted to narrow or limit uninsured motorist coverage contrary to the purpose and intent of the uninsured motorist statute. In *Salas*, the insured's minor daughter made a claim for uninsured motorist coverage after being involved in an automobile accident. *Id.* at 2. The insurer alleged that it was not liable under the uninsured motorist provision of its policy because of its "family household" exclusion which excluded uninsured motorist to the insured while occupying a vehicle other than the insured automobile owned by insured or any other person in same household. *Id*. at 2-3. This Court stated that the intent of the legislature in creating the uninsured motorist statute was to provide for the broad protection to insureds against uninsured motorists. *Id*. at 5. The Court further stated that:

> [T]he intention of the Legislature, as mirrored by the decisions of this Court, is plain to provide for the broad protection of the citizens of this State against uninsured motorists. As a creature of statute rather than a matter for contemplation of the parties in creating insurance policies, the uninsured motorist protection **is not susceptible to the attempts of the insurer to limit or negate that protection.**

Salas, 272 So.2d 1 at 5 (emphasis supplied).

In *Flores v. Allstate Ins. Co*., 819 So.2d 740 (Fla. 2002), an insured filed an action to recover P.I.P benefits and uninsured motorist benefits. The insurer claimed that the insured had committed fraud when making his P.I.P. claim, and according to the general policy conditions in its policy which permitted the insurer to deny coverage based on fraud and material misrepresentation, uninsured motorist coverage was voided. This Honorable Court held that the general policy conditions did not permit the insurer to deny uninsured motorist coverage for an unrelated fraud. This Honorable Court also noted that "courts have an obligation to invalidate exclusions on coverage that are inconsistent with the purpose of the statute that mandates the coverage." *Id.* at 745.

The use of exclusionary language or a direct attempt of the insurer to limit or create exemptions from the statutory mandate is not recognized. *Salas*, 272 So. 2d at 5*; See also Diaz-Hernandez v. State Farm Fire & Casualty Co.,* 19 So. 3d 996, 1000 (Fla. 3d DCA 2009) (concluding that a provision in a policy was invalid because it was against the public policy of the statute); *Vasques v. Mercury Cas. Co.,* 947 So. 2d 1265, 1269 (Fla. 5th DCA 2007) (stating that restrictions on statutorily mandated coverage must be carefully examined because exclusions that are inconsistent with the purpose of the statute are invalid) (citing *Flores*, 819 So. 2d at 745).

Like UM coverage, PIP is statutorily created and also enjoys protection from insurer-imposed restrictions. In fact, the protections afforded PIP coverage must be greater because, unlike UM, PIP coverage is made mandatory. Moreover, the enactment of the PIP statute was a legislative trade-off to assure for the swift and virtually automatic payment of medical expenses in exchange for certain torts rights taken from Floridians in the statute. Hence, insurer-imposed restrictions must be more closely scrutinize to safeguard the constitutionality of the PIP statute.

This Honorable Court's decisions have been consistent in their rejection of insurer-placed restrictions on statutorily-mandated coverage. Hence, the true issue has been long-settled in Florida and was just more specifically addressed in *Custer*.

IV. THIS COURTS EUO ANALYSIS IN *CUSTER* IS ALSO CONSISTENT WITH FLORIDA DISTRICT COURTS' REPEATED REJECTION OF ATTEMPTS BY INSURERS TO ALTER, LIMIT, OR ELIMINATE THEIR OBLIGATION TO PAY P.I.P CLAIMS

In addition to the cited precedent from this Honorable Court, the *Custer* decision is also consistent with long-standing Florida district court decisions rejecting insurers' constant attempts to alter, limit or eliminate its obligation to pay P.I.P claims. Ever since PIP was created, insurers have searched for ways to carve out exceptions and limitations to their obligations, and the Courts have rejected such attempts. *See Crooks v. State Farm Mut. Auto. Ins. Co.*, 659 So. 2d 1266 (Fla. 3d DCA 1995), *rev. dism.*, 662 So.2d 933 (Fla. 1995) (insurer's attempt to

relieve itself of liability to pay P.I.P. benefits by requiring insured to submit the bills on a particular claim form rejected); *Kaklamanos v. Allstate Ins. Co.*, 796 So.2d 555 (Fla. 1st DCA 2001)(insurer's attempt to rely on an indemnification provision it added to the P.I.P. policy to assert that the insured could not sue it for non-payment of a P.I.P. unless the insured had either paid the bills or been sued by the medical provider rejected); *Amador v. United Auto. Ins. Co*., 748 So.2d 307 (Fla. 3d DCA 2000) (insurer's attempt to toll the 30-day period to pay claims by requesting EUOs more than thirty days after it received notice of the insureds' P.I.P. claims was rejected); *Ortega v. United Auto. Ins. Co.*, 847 So.2d 994 (Fla. 3d DCA 2003)(insurer's attempt to deny payment for P.I.P. medical bills because a copy of the license for the medical provider did not accompany the claim was rejected). *Martinez v. Fortune Ins. Co.*, 684 So.2d 201 (Fla. 4th DCA 1996)(insurer's attempt to toll the payment of P.I.P. claim asserting it has not received medical verification, vis-à-vis, a disability report from the insured physician was rejected); *Fortune Ins. Co. v. Pacheco*, 695 So.2d 394 (Fla. 3d DCA 1997)(insurer's attempt to toll its payment obligation by requiring the insured provide it with all supporting medical records before the 30-day period for payment began to run was rejected); *Palmer v. Fortune Ins. Co.*, 776 So.2d 1019 (Fla. 4th DCA 2001)(insurer's attempt to delay claim by trying to shift its statutory

burden to authenticate claim to insured's attorney, for providing police report, was rejected).

The inclusion of an EUO policy provision as a condition of receiving benefits under the **statutorily**-mandated PIP coverage is equally, if not more, restrictive than the conditions rejected by the various courts in the above-cited cases.

V. GEICO'S RELIANCE ON *GOLDMAN v. STATE FARM GENERAL INSURANCE CO.*, 660 So.2d 300 (Fla. 4th DCA 1995) IS MISPLACED

Insurance companies, including GEICO in the present case, have had a misplaced reliance on *Goldman v. State Farm General Ins. Co.*, 660 So.2d 300 (Fla. 4th DCA 1995). *Goldman* involved an insured's claim for coverage under his homeowner's insurance policy after his home was burglarized. The insurer demanded that the insureds submit to an examination under oath pursuant to a policy condition in its policy. The Fourth District held that the provision in the insurer's policy was a condition precedent to suit and an insured's failure to submit precluded action under the policy.

This Honorable Court clearly distinguished the *Goldman* case in its analysis in *Custer* and is therefore inapplicable to in the P.I.P context. This Court specifically stated:

> Goldman involved a homeowner's insurance policy and the insured's failure to attend an examination under oath pursuant to the contractual terms of the policy, which has no

> application in the statutorily required coverage context. Sec 660 So. 2d at 301. **The Florida No-Fault statute is mandatory and does not recognize such a condition. It is therefore invalid and contrary to the statutory terms.**

Goldman at 4. (Emphasis added).

VI. THE INCLUSION OF AN EUO CONDITION TO THE NEW P.I.P STATUTE DURING THE 2012 LEGISLATIVE SESSION FURTHER HIGHLIGHTS ITS ABSENCE IN PRIOR VERSIONS

Furthermore, it must be noted that during the 2012 legislative session, an EUO requirement was added to §627.736. The provision states:

> 627.736 Required personal injury protection benefits; exclusions; priority; claims.—
>
> (6) DISCOVERY OF FACTS ABOUT AN INJURED PERSON; DISPUTES.—
>
> (g) An insured seeking benefits under ss. 627.730–627.7405, including an omnibus insured, must comply with the terms of the policy, which include, but are not limited to, submitting to an examination under oath. The scope of questioning during the examination under oath is limited to relevant information or information that could reasonably be expected to lead to relevant information. Compliance with this paragraph is a condition precedent to receiving benefits. An insurer that, as a general business practice as determined by the office, requests an examination under oath of an insured or an omnibus insured without a reasonable basis is subject to s. 626.9541.[2]

[2] Ch. 2012-197, § 10, at 29, Laws of Florida.

This provision essentially requires insureds to comply with all terms of the P.I.P policy including submitting to an EUO.[3] The provision also makes compliance with this requirement a condition precedent to the receipt of benefits.[4] Also, the House of Representatives' summary analysis of House Bill 119 (bill providing the changes in personal injury protection (PIP) coverage) outlines the effects of the proposed changes to the P.I.P. statute.[5] This overview specifically mentions EUO's as one of the proposed changes to the P.I.P statute. Therefore, the addition of this provision by the legislature in 2012 further illustrates that an EUO requirement was never recognized in the P.I.P statute and is now, for the first time, being added to the statute.

VII. THE MICHIGAN SUPREME COURT'S CONSIDERATION OF THE SAME P.I.P-EUO ISSUE IS CONSISTENT WITH THIS COURT'S ANALYSIS IN *CUSTER*

This Honorable Court may want to consider the analysis of the Michigan Supreme Court (both the majority and dissenting opinions) in its interpretation of Michigan's analogous no-fault statute. In *Cruz v. State Farm Mut. Auto. Ins. Co.*, 614 N.W. 2d 689 (Mich. 2002), the Michigan Supreme Court, *en banc*, addressed an important aspect of the issue presented in this case:

> We granted leave to appeal to consider whether the inclusion of

[3] Ch. 2012-197, § 10, at 29, Laws of Florida.
[4] *Id.*
[5] CS/CS/HB 119 (2012) Summary Analysis (May 7, 2012).

> an examination under oath (EUO) provision in an automobile no-fault insurance policy is permitted under the Michigan no-fault insurance act. MCL 500.3101 *et seq.* We hold that EUO provisions may be included in no-fault policies, but are only enforceable to the extent that they do not conflict with the statutory requirements of the no-fault act. Because the insurer in this matter, State Farm Mutual Automobile Insurance Company, impermissibly sought to enforce the EUO as a condition precedent to its duty to pay no-fault benefits, this brought the EUO provision into conflict with the requirements of the no-fault statute. The EUO provision must yield to the statute.

Id., at 592. The Michigan Court found that insurers cannot use EUOs to avoid payment, but can use them to establish the statutorily requisite proof of loss:

> Thus, a no-fault policy that would allow the insurer to avoid its obligation to make prompt payment upon the mere failure to comply with an EUO would run afoul of the statute and accordingly be invalid. However, an EUO provision designed only to ensure that the insurer is provided with information relating to **proof of the fact and of the amount of the loss** sustained—i.e., the statutorily required information on the part of the insured—would not run afoul of the statute.

Cruz at 598. (emphasis added; footnote omitted). Thus, NUÑEZ cannot see how GEICO can demand an EUO and make attendance at the EUO a condition precedent to providing P.I.P. benefits. As the Michigan Court dissenters indicate, EUOs are a setup for an insurer to abuse its insureds.

CONCLUSION

Based on the arguments and authorities cited herein, NUÑEZ respectfully requests that this Honorable Court answer the certified question in the negative.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the above and foregoing was mailed on this 2nd day of June, 2012 to **Suzanne Youmans Labrit, Esq.**, SHUTTS & BOWEN, LLP., 4301 W. Boy Scout Blvd, Suite 300, Tampa, Florida 330; **Douglas G. Brehm, Esq.**, SHUTTS & BOWEN, LLP., 201 S. Biscayne Blvd Suite 1500, Miami, FL 33131; **Frank Zacherl, Esq.,** SHUTTS & BOWN, LLP, 201 S. Biscayne Blvd, Suite 1500, Miami, FL 33131 and **Marlene S. Reiss, Esq.,** MARLENE S. REISS, P.A., 9130 S. Dadeland Blvd, Suite 1612, Miami, FL 33156.

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CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY that this brief complies with the font requirements of Florida Rule of Appellate Procedure 9.210(a) because the brief has been prepared in a proportionally spaced font using Microsoft Office Word in Times New Roman, 14-point font.

Respectfully submitted by,

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