

**IN THE SUPREME COURT OF FLORIDA**

**CASE NO. SC10-1368**

**THIRD DISTRICT CASE NO. 3D10-1595**

**JOSE VEGA,**

**Petitioner,**

**vs.**

**UNITED AUTOMOBILE INSURANCE COMPANY,  
A Florida corporation,**

**Respondent.**

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**BRIEF OF RESPONDENT ON JURISDICTION**

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## **INTRODUCTION**

The Petitioner, Jose Vega, was the Plaintiff in the trial court, the Petitioner before the District Court and will be referred to as Vega. The Respondent, United Automobile Insurance Company, was the Defendant below, the Respondent before the District Court and will be referred to as United Auto. The symbol “A.” will designate the appendix to this brief.

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

Vega petitioned the Third District Court of Appeal for second-tier review of a decision of the circuit court in its appellate capacity. The Third District denied the petition on the authority of *United Auto. Ins. Co. v. Santa Fe Medical Center*, 21 So.3d 60 (Fla. 3d DCA). Vega then sought to invoke the jurisdiction of this Court.

## **SUMMARY OF THE ARGUMENT**

The Petitioner alleges conflict between the decision of the Third District in *United Auto. Ins. Co. v. Santa Fe Medical Center*, 21 So.3d 60 (Fla. 3d DCA) and the general public policy of “swift and virtually automatic payment” of PIP claims. This fails to meet the requirement of express and direct conflict “with a decision of another district court of appeal or of the supreme court on the same question of law” mandated by Article V, Section (3)(b)(3), Florida Constitution. Further, even



if this conflict is deemed to meet the standard to merit this Court's jurisdiction, the conflict alleged is purely speculative and ultimately illusory.

The alternative grounds for Petitioner seeking this Court's review are likewise without merit. There is no conflict between the decision in the instant case and *United Auto. Ins. Co. v. Rodriguez*, 808 So.2d 82 (Fla. 2001).

Respondent acknowledges that the decision of the Third District below was decided based on its earlier decision in *United Auto. Ins. Co. v. Santa Fe Medical Center*, 21 So.3d 60 (Fla. 3d DCA), which is currently pending before this Court. Should this Court exercise its jurisdiction to review *Santa Fe*, this Court would have jurisdiction to review the instant case.

## ARGUMENT

### **THE CONFLICT ALLEGED BY PETITIONER BETWEEN THE DECISION OF THE THIRD DISTRICT AND PUBLIC POLICY IS NOT PROPER GROUNDS FOR THIS COURT TO ACCEPT JURISDICTION.**

The primary basis on which the Petitioner alleges conflict with the opinion of the Third District is not a proper basis for this Court to exercise its jurisdiction. This Court may only review a decision of a district court of appeal that expressly and directly conflicts with a decision of another district court of appeal or the Supreme Court on the same question of law. Article V, Section (3)(b)(3), Florida Constitution; *Jenkins v. State*, 385 So.2d 1163, 1166 (Fla. 1980). Petitioner instead argues that the decision below conflicts with the general public policy of “swift and virtually automatic payment” of PIP claims. Petitioner cites several cases which, generally, stand for that proposition.<sup>1</sup> However, Petitioner cannot point to any statements within the decision of the Third District in *United Auto. Ins. Co. v. Santa Fe Medical Center*, 21 So.3d 60 (Fla. 3d DCA) which directly conflict with these points. Rather, the Petitioner implies that the holding of the *Santa Fe* decision will lead to the alleged conflict. Implied or inferred conflict is not a proper

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<sup>1</sup> The cases cited by Petitioner include *Lasky v. State Farm Ins. Co.*, 296 So.2d 9 (Fla. 1974); *Chapman v. Dillon*, 415 So.2d 12 (Fla. 1982), *Ivey v. Allstate Ins. Co.*, 774 So.2d 679 (Fla. 2000); *United Auto. Ins. Co. v. Rodriguez*, 808 So.2d 82 (Fla. 2001); *Allstate Ins. Co. v. Kaklamanos*, 843 So.2d 885 (Fla. 2003); *State Farm Mut. Auto. Ins. Co. v. Nichols*, 932 So.2d 1067 (Fla. 2006); and *Allstate Ins. Co v. Holy Cross Hosp., Inc.*, 961 So.2d 328 (Fla. 2007).

basis for this Court's jurisdiction. *Dep't of Health & Rehab. Servs. v. Nat'l Adoption Counseling Serv., Inc.*, 498 So.2d 888, 889 (Fla. 1986).

Moreover, upon closer review, the conflict which Petitioner alleges is completely illusory. The *Santa Fe* decision simply explains the proper application of sections 627.736(4)(b) and 627.736(7)(a), Florida Statutes. It does nothing to alter the statutory penalties incurred for overdue bills. For Petitioner's arguments to have any merit, one must assume that *every* bill submitted by *every* medical provider to *every* insurer for *every* claim for PIP benefits is, without question, subject to payment under the terms of the policy. This is absolutely not true. *AIU Ins. Co. v. Daidone*, 760 So.2d 1110, 1112 (Fla. 4th DCA 2000)(no PIP benefits due for treatment not reasonable, related, or necessary to the accident). Even upon the commencement of a lawsuit, the burden to prove that bills are reasonable and necessary lies solely with the plaintiff. *Derius v. Allstate Indem. Co.*, 723 So.2d 271, 272 (Fla. 4th DCA 1998). If a medical bill is determined to be for treatment that is not reasonable, related, or necessary, there can be no benefits "due" for that bill. *United Auto. Ins. Co. v. Millennium Diagnostic Imaging Center, Inc.*, 12 So.3d 242, 245 (Fla. 3d DCA 2009). Under the arguments advanced by the Petitioner, an insurer must pay all claims within thirty days of the receipt of the bills, irrespective of whether the bills are due and owing under the policy. This argument has been

soundly rejected by this Court. *United Auto. Ins. Co. v. Rodriguez*, 808 So.2d 82 (Fla. 2001)(holding that an insurer is not barred from contesting a claim after the thirty day period has expired).

**THE THIRD DISTRICT'S DECISION DOES NOT  
CONFLICT WITH *UNITED AUTO. INS. CO. V.  
RODRIGUEZ*, 808 SO.2D 82 (FLA. 2001).**

Petitioner next argues that the decision of the Third District conflicts with the decision of this Court in *United Auto. Ins. Co. v. Rodriguez*, 808 So.2d 82 (Fla. 2001). Petitioner alleges that, under *Rodriguez*, an insurer must obtain reasonable proof within thirty days of the receipt of the bills. This too is without merit. In *Rodriguez*, this Court determined that, “if the [PIP] benefits are not paid within thirty days and the insurer does not have reasonable proof that it is not responsible for the payment, the payment is ‘overdue.’” *Id.* at 86. The Court concluded, “an insurer is subject to specific penalties once a payment becomes ‘overdue’ ... [t]he insurer, however, is not forever barred from contesting the claim.” *Id.* at 87. Under the Petitioner’s analysis, an insurer who does not obtain reasonable proof within thirty days of the receipt of the bills would be barred from contesting the claim. Accordingly, the Petitioner alleges conflict purely based upon a misrepresentation of the holding of *Rodriguez*.

As explained by the Third District:

subsection (4)(b) does not preclude an insurer from challenging the submitted claim after the thirty-day time period, or limit the ability of the insurer to obtain and submit proof, after the thirty-day period, that the treatment was not reasonable, necessary, or related

*Santa Fe* at 64. This is absolutely consistent with the holding of this Court in *Rodriguez*. In *Santa Fe*, The Third District neither modified the “overdue” status of such bills nor the statutory penalties which accompany said status. The Third District simply restated the fact an insurer is not barred from contesting a claim after the thirty day period has expired, which is the crux of the *Rodriguez* decision. Ultimately, the Petitioner wishes to equate a bill which is merely “overdue” to a bill which must be paid. This assertion is without basis in fact or law.

**THIS COURT WOULD ONLY HAVE JURISDICTION IN THE INSTANT CASE IF THIS COURT EXERCISES ITS JURISDICTION TO REVIEW *UNITED AUTO. INS. CO. V. SANTA FE MEDICAL CENTER*, 21 SO.3D 60 (FLA. 3D DCA).**

The decision of the Third District below was decided based on its earlier decision in *United Auto. Ins. Co. v. Santa Fe Medical Center*, 21 So.3d 60 (Fla. 3d DCA). Currently, *Santa Fe* is pending before this Court on a Petition for Discretionary Review in Case No. SC09-2100.<sup>2</sup> Should this Court elect to take jurisdiction in *Santa Fe*, this Court would have jurisdiction to review the instant

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<sup>2</sup> Proceedings in this case have been stayed pending the resolution of Custer Medical Center a/a/o Maximo Masis v. United Auto. Ins. Co., Case No. SC08-2036.

case as a “piggyback case.” *The Fla. Star v. B.J.F.*, 530 So.2d 286, 288 n. 3 (Fla. 1988). However, if this Court elects to decline jurisdiction in *Santa Fe*, this Court should deny review of the instant case, as the Petitioner has set forth no independent grounds for this Court’s jurisdiction.

### **CONCLUSION**

Based upon the foregoing points and authorities, Respondent respectfully submits that the Third District’s decision does not create any conflict and therefore Respondent prays that this Court enter an order denying discretionary jurisdiction.

Respectfully submitted,

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LARA J. EDELSTEIN

### **CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing was sent via U.S. Mail, on this \_\_\_\_ day of July 2010 to: Virginia Best, Esq., Lopez & Best, 2333 Brickell Avenue, Suite A-1, Miami, FL 33129.

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LARA J. EDELSTEIN

### **CERTIFICATE OF COMPLIANCE WITH FLORIDA RULE OF APPELLATE PROCEDURE 9.210**

I HEREBY CERTIFY that this brief complies the font requirements of Florida Rule of Appellate Procedure 9.210(a)(2).

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LARA J. EDELSTEIN