

SUPREME COURT OF FLORIDA

No. SC14-1355

L.T. 4D11-3796

WELLNESS ASSOCIATES OF FLORIDA INC.,
Petitioner,

v.

USAA CASUALTY INSURANCE CO.,
Respondent.

**PETITIONER'S AMENDED BRIEF ON
JURISDICTION**

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Statement of Case and Facts

As the District Court's Opinion shows,¹ after a motor vehicle collision in 2008 Wellness supplied medical services to USAA's insured, but USAA refused to make prompt payment of the mandatory benefits required by the policy.² Provider was forced to sue USAA in 2010, claiming 80% of its reasonable charge in damages. USAA said the policy paid only a lesser sum under the permissive Medicare fee schedules, tacitly conceding that the services were necessary. Provider replied that the policy coverage was ambiguous under *Kingsway Amigo Insurance Co. v. Ocean Health Inc.*, 63 So.3d 63 (Fla. 4th DCA 2011). USAA rejoined that, even so, *Kingsway* was not controlling authority because it had not been decided yet when the claim was made.

Meanwhile USAA paid only ensuing claims from other providers, thereby depleting policy limits until, in the end, benefits were gone. USAA alleged it had used up the limits of coverage and, therefore, it was not liable for the charges. Provider replied that USAA had become liable to pay the claim when it turned out to be overdue more than 30 days after receipt despite later depleting coverage. But the trial court agreed with USAA and held that coverage for the claim was "exhausted."

¹ See Appendix, at 1-4.

² See § 627.736(1)(a), Fla. Stat. (2012) (PIP insurance "must provide ... Eighty percent of reasonable expenses" for medical benefits).

On review,³ in *Northwoods Sports Medicine and Physical Rehabilitation Inc. v. State Farm Mutual Auto. Ins. Co.*, 137 So.3d 1049 (Fla. 4th DCA 2014), the Fourth District agreed that *Kingsway* had not been decided when the claim was received and “thus was not controlling.”⁴ The Court then addressed “exhaustion of benefits” without deciding whether the mandatory benefit or the permissive fee schedules applied. It rejected provider’s argument that the PIP statute makes the insurer strictly liable for any claim not paid within 30 days and that USAA’s payment of subsequent claims could not be a valid defense.

Without referring to PIP’s statutory 30-day deadline for the payment of claims, the District Court held that USAA had not yet incurred any liability because it had disputed the claim. 137 So.3d at 1056. The Court held that “in order to *activate* [sic] the right to claim PIP payments *under the assignment*,” the provider’s bills must “*have been determined* to be reasonable and necessary.” 137 So.3d at 1057 [e.s.]. “Until the necessity of the services and reasonableness of the charges is settled, *their compensability under PIP is not established, and assignment of PIP*

³ *Northwoods* was two consolidated cases, but review here deals with only one of them.

⁴ 137 So.3d at 1053. The District Court’s refusal to apply *Kingsway* clearly conflicts with *State v. Klayman*, 835 So.2d 248 (Fla. 2002) (original intent of statute is clarification settling meaning of law since enactment; trial court required to apply such law); and *Hendeles v. Sanford Auto Auction Inc.*, 364 So.2d 467 (Fla. 1978) (disposition of case on appeal must accord with law in effect at time of any court’s decision).

benefits has not matured.” Id. [e.s.]. The District Court reasoned, “as long as the benefits’ compensability under PIP has not been established” it did not matter when benefits were used up.

*Summary of Argument*⁵

The Fourth District applied a new rule of law: the PIP liability for an insurer to pay a claim within 30 days does not begin to run until a judge first determines the charge is reasonable and necessary. It conflicts with several prior decisions of this Court: *Nunez v. Geico Gen. Ins. Co.*, 117 So.3d 388 (Fla. 2013) (PIP’s purpose is to provide swift, virtually automatic payment; policy conditions that delay or deny benefits are contrary to statutory protection and invalid; PIP liberally construed in favor of insured); *Custer Med. Ctr. v. United Auto. Ins. Co.*, 62 So.3d 1086 (Fla. 2010) (conditions delaying or denying PIP benefits contrary to PIP may not be enforced); *Flores v. Allstate Ins. Co.*, 819 So.2d 740 (Fla. 2002) (necessary to scrutinize conditions restricting statutorily mandated benefits to eliminate those contrary to purposes of statute); *United Auto. Ins. v. Rodriguez*, 808 So.2d 82 (Fla. 2001) (penalties for denying quick, virtually automatic payment of benefits secure compliance with statute); *Ivey v. Allstate Insurance Co.*, 774 So.2d 679 (Fla. 2000)

⁵ *Wallace v. Dean*, 3 So.3d 1035 (Fla. 2009) (Supreme Court has discretionary conflict jurisdiction where decision of District Court announced a rule of law that conflicted with rule of law previously announced by Supreme Court). Certification is unnecessary.

(PIP construed liberally in favor of insured; no PIP statute tolls 30-day limit for paying benefits; burden clearly on insurer to authenticate and pay claims within 30-days); and *Salas v. Liberty Mutual Fire Ins. Co.*, 272 So.2d 1 (Fla. 1972) (insurer may not limit PIP statutory provisions for benefits to insureds).

Argument

In *Ivey v. Allstate Insurance Co.*, 774 So.2d 679, 684 (Fla. 2000), this Court expressly granted discretionary conflict review because the District Court decision was “contrary to well established and recognized principles of existing PIP law.” In *Custer Medical Center v. United Auto. Ins. Co.*, 62 So.3d 1086, 1096 (Fla. 2010), this Court again granted review saying the District Court decision was “contrary to well established and recognized principles of existing PIP law.” This decision also applies to conditions that delay and deny PIP benefits “contrary to well established and recognized principles of existing PIP law.”

For decades this Court’s cases have insisted that statutory text is *the* benchmark for deciding issues arising in No-Fault PIP litigation. In the year after No-Fault was enacted, this Court first set down the principle in *Salas* that conditions in No-Fault insurance policies must be consistent with the statute:

“the intention of the Legislature ... is plain to provide for the broad protection of the citizens of this State As a creature of statute rather than a matter for contemplation of the parties in creating insurance policies, the [No-Fault] protection is not susceptible to the attempts of the insurer to limit or negate that protection.”

272 So.2d at 5. In *Ivey*, “without a doubt” this Court defined the No-Fault statutory scheme to “*provide swift and virtually automatic payment so that the injured insured may get on with his life without undue financial interruption.*” [e.s.]

774 So.2d at 684. *Ivey* emphatically declared:

“[T]he statutory language is clear and unambiguous. *The insurance company has thirty days in which to verify the claim after receipt of an application for benefits. There is no provision in the statute to toll this limitation. The burden is clearly upon the insurer to authenticate the claim within the statutory time period.* To rule otherwise would render the recently enacted ‘no fault’ insurance statute a ‘no pay’ plan – a result we are sure was not intended by the legislature.” [e.s.]

774 So.2d at 684 (quoting Chief Judge Spector in *Dunmore v. Interstate Fire Ins. Co.*, 301 So.2d 502, 502 (Fla. 1st DCA 1974)).

Many of this Court’s decisions repeat these principles. *Nunez*, 117 So.3d at 395 (“Without a doubt, the purpose of the no-fault statutory scheme is to ‘provide swift and virtually automatic payment’ ”); *Custer*, 62 So.3d at 1096 (purpose of No-Fault scheme is to provide swift virtually automatic payment so insured may not incur undue financial interruption); *Allstate Ins. Co. v. Holy Cross Hosp. Inc.*, 961 So.2d 328 (Fla. 2007) (PIP provides “swift and virtually automatic payment so that the injured insured may get on with his life without undue financial interruption”); *State Farm Mutual Auto. Ins. v. Nichols*, 932 So.2d 1067, 1077 (Fla. 2006) (PIP uniquely provides swift, virtually automatic payment); *State Farm Mutual Auto. Ins. Co. v. Lee*, 678 So.2d 818 (Fla. 1996) (insurer liable to pay PIP benefits within

30 days after receipt of PIP claim). As this Court said in *Flores*:

“these principles must be kept in mind when considering restrictions on statutorily mandated coverage because of the courts’ additional obligation to invalidate exclusions on coverage that are inconsistent with the purpose of the [No-Fault] statute.

“In light of the overarching purposes behind the statutory protection, conditions or exclusions must be carefully scrutinized first to determine whether [they] ... unambiguously exclude[] or limit[] coverage, and then to determine, if so, whether enforcement of a specific provision would be contrary to the purpose of the uninsured motorist statute.” [e.s.]

819 So.2d at 745. Nothing in any PIP statute defers to an insurer’s business model.

Only last year *Nunez* strongly reaffirmed this construction of the PIP statutes and their crucial role in PIP litigation:

“enforcement of ... conditions to delay or deny benefits negates statutory PIP protection and is invalid. This is especially true considering that ‘Florida’s no-fault laws are construed liberally in favor of the insured.’

“In light of the overarching purposes behind the statutory protection, conditions or exclusions must be carefully scrutinized first to determine whether the condition or exclusion unambiguously excludes or limits coverage, and then to determine, if so, whether enforcement of a specific provision would be contrary to the purpose of the [PIP] statute.” [e.s., c.o.]

117 So.3d at 395. The issue in *Nunez* involved a condition delaying payment of PIP benefits until the insured first submitted to a EUO.

This Court disapproved of the EUO delay as an invalid “substantive change in the statute” contrary to its terms. *Id.* *Northwoods* here imposes an even more significant condition, delaying payment considerably longer until the amount due

can be settled in litigation. This condition can surely be read to displace PIP's requirement for swift, virtually automatic payment within 30 days.

This sequence of related times affecting claims was crafted to make PIP function like other health benefits.⁶ This Court's cases have been powerfully clear that certain, speedy payment is vital. In *Menendez v. Progressive Express Ins. Co.*, 35 So.3d 873, 877 (Fla. 2010), this Court stressed that "any impediment to the right of the insured to recover in a 'swift and virtually automatic' way has the potential for interfering with the PIP scheme's goal of being a reasonable alternative to common law tort principles." It is the insurer who must itself verify necessity and reasonability and timely pay within 30 days after receipt of the claim.⁷ Routinely requiring providers to litigate the necessity for medical services and the reasonability of the amount charged could hardly be more in conflict with this Court's holdings and the PIP statute.

Prompt, certain payment of benefits was also central to the constitutional

⁶ See § 627.736(5)(c) (requiring providers to claim benefits within 35 days before the insurer has the claim); § 627.736(4) (specifying that benefits are then due and payable "*as loss accrues*" and the insurer receives ordinary "*reasonable proof*" of what was provided); and § 627.736(4)(b) (fixing insurer liability for the amount claimed in PIP benefits as "*overdue if not paid within 30 days* after the insurer is furnished written notice of the fact of a covered loss and of the amount of same").

⁷ *Ivey*, 774 So.2d at 684 ("The burden is ***clearly upon the insurer*** to authenticate the claim within the statutory time period").

validity of PIP.⁸ In *Lasky v. State Farm Ins. Co.*, 296 So.2d 9, 15 (Fla. 1974), this Court explained that the injured party's assurance of speedy payment of medical bills was crucial to holding the loss of the right to sue for non-permanent injuries was not unconstitutional. The District Court's rule directly conflicts with *Lasky*.

This Court should be aware there are now literally hundreds of PIP cases in County Courts and on appeal in Circuit Courts.⁹ Outcomes on PIP charges are now almost evenly divided between providers and insurers. Indeed the Fourth District recently accepted discretionary jurisdiction over 32 consolidated cases to review whether the policies properly specify the fee schedules to reimburse providers.¹⁰ The First District has 14 cases with the same issue.¹¹

In *Custer* and *Ivey* this Court granted discretionary review simply because a decision was contrary to this Court's "well established and recognized principles of existing PIP law." With all this PIP litigation roiling below, the existing decisional

⁸ See *Lasky v. State Farm Ins. Co.*, 296 So.2d 9, 15 (Fla. 1974) (explaining No-Fault provision that "injured party is assured of speedy payment of his medical bills" should be understood as crucial to Court's determination that loss of right to sue for non-permanent injuries did not make law unconstitutional).

⁹ These cases came after *Geico Gen. Ins. Co. v. Virtual Imaging Serv. Inc.*, 2013 WL 3332385, 38 Fla. L. Weekly S517 (Fla. July 3, 2013) [n/k/a *Virtual Imaging*]. (Apparently this Court's opinion is not final because WEST has not yet published *Virtual Imaging* in the permanent Reporter.)

¹⁰ *Orthopedic Spec. v. Allstate Ins. Co.*, Case No. 4D14-0287 (Fla. 4th DCA April 9, 2014) (Order Accepting Juris.).

¹¹ *Allstate Fire & Cas. Ins. Co. v. Stand-Up MRI of Tallahassee P.A.*, Case No. 1D14-1213 (Fla. 1st DCA May 16, 2014) (Order Accepting Juris.).

incoherence is decidedly inimical to statutory ends. Unless the Court intervenes, PIP will remain unpredictable: only what each County Court Judge says it means.

Certificate of E-Filing and E-Service

I hereby certify that in compliance with Fla. R. Jud. Adm. 2.515 this Corrected Brief was electronically filed on July 28, 2014. *I further certify* that in compliance with Fla. R. Jud. Adm. 2.516 this Corrected Brief was electronically served on all persons in the attached Service List on July 28, 2014.

Certificate of Font Compliance

The font is MS Word 2010, Times New Roman, 14-point.

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