

IN THE SUPREME COURT OF FLORIDA
TALLAHASSEE, FLORIDA

CASE NO. SC00-112

STATE FARM FIRE &
CASUALTY COMPANY,

Petitioner,

-vs-

JUANA MARIA PEREZ,

Respondent.

AMENDED BRIEF OF AMICUS CURIAE
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CERTIFICATE OF TYPE SIZE & STYLE

Appellant hereby certifies that the type size and style of the Initial Brief of Appellants is Times New Roman 14pt.

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PREFACE

The Academy of Florida Trial Lawyers is a state-wide voluntary association of more than 3,000 attorneys, whose practices emphasize litigation for the protection of personal and property rights of individuals. The Academy has requested leave to appear as Amicus Curiae in this case to address issues involved in this Court's consideration.

SUMMARY OF ARGUMENT

In 1974, this Court upheld the constitutionality of the No-Fault Act in *LASKY v. STATE FARM INS. CO.*, 296 So.2d 9 (Fla. 1974), based on a conclusion that in return for losing the right to seek intangible damages in cases not involving permanent injury, a plaintiff would be assured of prompt recovery of his major out-of-pocket losses, i.e., medical costs and lost wages. The Third District's decision in this case is consistent with that decision in requiring the insurance company to quickly respond when a proof of loss is provided by a plaintiff under personal injury protection (PIP) coverage. To hold the 30 day rule does not require the insurance company to make a determination in that time period would undermine the rationale for upholding the constitutionality of the Act by depriving the plaintiffs of the quid pro quo for the elimination of the right to intangible damages in cases where there is no permanent injury.

It is a settled principle of statutory construction that a statute should be interpreted in a manner to render it constitutional. Therefore, this Court should construe the statute in accordance with its determination in *LASKY* that a plaintiff is entitled to a prompt determination regarding entitlement to PIP benefits. To accept the interpretation argued by the insurance companies would mean that the 30 day rule is

nothing more than a grace period which extends the date on which prejudgment interest is due. This holding does not encourage fraud, since there are numerous ways in which an insurance company can protect itself or seek compensation if an insured engages in fraudulent conduct. Additionally, if the 30 day rule does not eliminate all of the insurer's defenses, since it does not affect coverage defenses or other grounds for denial that are provided in the statute. Therefore, the Third District's decision should be approved.

ARGUMENT

Introduction

One of the cornerstones of Florida automobile insurance law is the No Fault Act. From a Florida citizen's perspective, the foundation for that cornerstone rests on the rule that no fault benefits must be paid within 30 days after the insurance company receives the claim. For the last 26 years, Florida courts have consistently recognized that an insurance company has limited time from receipt of a medical bill to verify the bill, investigate whether a payment is covered under the policy, and to make payment, see, DUNMORE v. INTERSTATE FIRE INS. CO., 301 So.2d 502 (Fla. 3d DCA 1974). The Third District's holding in the case sub judice merely reiterates this longstanding rule by requiring an insurance company to investigate whether a medical bill is reasonable, necessary and related within 30 days, or the insurance company is responsible to pay the bill. This holding squarely comports with the legislative intent behind the Act, and was the critical factor which enabled the Act to survive a constitutional challenge soon after it was promulgated.

In 1971, the Florida Legislature enacted Fla. Stat. §627.730 through §627.7405, which was designated the "Florida Motor Vehicle No-Fault Law," Fla. Stat. §627.730. Under the Act, Florida citizens were deprived of the right to recover for intangible

losses caused in automobile accidents if their injuries were not permanent, Fla. Stat. §627.737. In return, compensation for economic losses was to be readily available on a no-fault basis. This was codified, in part, in Fla. Stat. §627.736(4)(b), which provides that "[p]ersonal injury protection insurance benefits paid pursuant to this section shall be overdue if not paid within 30 days after the insurer is furnished written notice of the fact of a covered loss and the amount of same." This provision is commonly known as the "thirty day rule."

The No-Fault Act Survives a Constitutional Challenge

In *LASKY v. STATE FARM INS. CO.*, 296 So.2d 9 (Fla. 1974), this Court addressed the constitutionality of the newly enacted No-Fault Act in light of its limitations concerning the recoverability of non-economic damages in a lawsuit against the tortfeasor.¹ This Court had previously determined in *KLUGER v. WHITE*, 281 So.2d 1 (Fla. 1973), that the property damage limitations in the Act were unconstitutional as violative of the access to courts provision of the Florida Constitution, Fla.Const. Art. I §21. In *KLUGER*, this Court ruled that since the No-

¹/Fla. Stat. § 627.737 created the no-fault threshold that must be met in order for an injured motorist to obtain non-economic damages as a result of an automobile collision.

Fault Act abolished a person's right to sue for certain property damages caused by tortious conduct without providing a reasonable alternative to protect those rights (and without an overpowering public necessity), that portion of the statute was constitutionally infirm.

In LASKY, this Court addressed the constitutionality of the provision abolishing the right to recover intangible damages if no permanent injury occurred. This Court upheld that provision, but only because there was a reasonable alternative provided which included the speedy recovery of economic losses on a no-fault basis. This Court stated (296 So.2d at 14):

In exchange for his previous right to damages for pain and suffering (in the limited class of cases where recovery of these elements of damage is barred by s 627.737), with recovery limited to those situations where he can prove that the other party was at fault, the injured party is assured of recovery of his major and salient economic losses from his own insurer.

Protections are afforded the accident victim by this Act in the speedy payment by his own insurer of medical costs, lost wages, etc., while foregoing the right to recover in tort for these same benefits and (in a limited category of cases) the right to recover for intangible damages to the extent covered by the required insurance (F.S. s 627.737(1), F.S.A.); furthermore, the accident victim is assured of some recovery even where he Himself is at fault. In exchange for his former right to damages for pain and suffering in the limited category of cases where such items are preempted by the act, he receives not only a prompt recovery of his major,

salient out-of pocket losses--even where he is at fault-- but also an immunity from being held liable for the pain and suffering of other parties to the accident if they should fall within this limited class where such items are not recoverable. [Emphasis supplied.]

Accordingly, as recognized by this Court, part of the tradeoff given to Florida citizens for taking away their right to seek non-economic damages when no permanent injury was suffered, was the quick and assured payment of certain economic damages regardless of fault.

In LASKY, this Court noted the legislative objectives in enacting the No-Fault Act (296 So.2d at 16):

A lessening of the congestion of the court system, a reduction in concomitant delays in court calendars, a reduction of automobile insurance premiums and an assurance that persons injured in vehicular accidents would receive some economic aid in meeting medical expenses and the like, in order not to drive them into dire financial circumstances with the possibility of swelling the public relief roles...that the tort system of reparation was unduly slow and inefficient and that the pre-existing automobile insurance system was unduly costly; it has also been suggested that the pressing necessity of paying medical bills often forced an injured party to accept an unduly small settlement of his claims. [Emphasis supplied.]

In determining that the Act itself was reasonably related to the legislative objectives discussed above, this Court stated (296 So.2d at 16-17):

The Act also assures prompt payment of out-of-pocket losses to a large group and reduces greatly the likelihood of the filing of suits, thus reducing congestion in the courts and delays in court calendars and affording prompt relief to injured parties in need. [Emphasis supplied.]

This Court recognized in LASKY that the No-Fault Act was designed to reduce the number of suits brought to compensate the automobile accident victim for economic losses and was a safeguard against a victim being driven into dire financial circumstances as a result of medical bills and lost wages incurred in an automobile collision.

In a subsequent case challenging the constitutionality of the No-Fault Act, this Court emphasized that the Act had sustained the constitutional challenge in LASKY primarily because of the provisions for speedy payment of medical bills, stating, CHAPMAN v. DILLON, 415 So.2d 12, 17 (Fla. 1982):

Hence it was the fact that injured parties were assured prompt recovery of their major and salient economic losses, not all of their economic losses, which this Court found dispositive in LASKY.

See also, INDUSTRIAL FIRE AND CASUALTY INS. CO. v. KWECHIN, 447 So.2d 1337, 1339 (Fla. 1983).

The Third District's Decision

The Third District's holding in the case sub judice merely echoes the legislative intent behind the No-Fault Act and enforces the tradeoff deemed critical to the constitutionality of the No-Fault Act. It only requires an insurance company to investigate a claim within 30 days and establish its defense to the reasonableness, relatedness and necessity of a medical bill within that 30 day period. If the insurance company decides not to investigate within the 30-day period or cannot determine whether a bill is reasonable, necessary or related within that time period, it must pay the bill. Any other construction of the statute will obliterate the guarantee of swift and assured payment of claims.

Additionally, any other rule would increase the amount of litigation arising from automobile accidents, and would increase the likelihood that an automobile accident victim will not be able to pay his medical bills promptly. This would compromise the injured party's ability to obtain needed medical treatment, and also create the situation which this Court stated was to be eliminated by the No-Fault Act (LASKY, supra, 296 So.2d at 16):

[T]he pressing necessity of paying medical bills often forced an injured party to accept an unduly small settlement of his claims.

In short, the Third District's holding in this case ensures the preservation of the tradeoff given to Florida citizens for the elimination of their rights to seek non-economic damages in minor automobile collisions. It also maintains the constitutionality of the No-Fault Act and the legislature's intent in enacting it.

Statutory Construction

If the 30-day period addressed in Fla. Stat. §627.736(4)(b) is only intended to designate the period from which prejudgment interest or benefits will run, then the insured has no assurance of speedy payment of medical bills, and the tradeoff which sustained the constitutionality of the Act has been lost. Additionally, the legislative intent of reducing litigation would be lost. Florida citizens would have been deprived of a tort remedy by the Act receiving, in return, only a generic breach of contract action against their insurer in order to obtain their immediate and salient economic losses.

Under the insurance companies' analysis, the 30-day rule is nothing more than a grace period in favor of the insurer with respect to prejudgment interest. Fla. Stat. §627.736(4) states that the benefits due from the insurer "shall be due and payable...upon receipt of 'reasonable proof' of such loss." It has long been the law in Florida that in a contract action prejudgment interest runs from the date that a debt or payment is due and payable, see *BRITE v. ORANGE BELT SECURITIES CO.*, 182

So. 892, 896 (Fla. 1938); *DIVERSIFIED COMMERCIAL DEVELOPERS, INC. v. FORMRITE, INC.*, 450 So.2d 533 (Fla. 4th DCA 1984); *BEAR AUTOMOTIVE SERVICE EQUIPMENT CO. v. WESTSIDE AUTOMOTIVE*, 616 So.2d 1220 (Fla. 1st DCA 1993); see also, *ARGONAUT INS. CO. v. MAY PLUMBING CO.*, 474 So.2d 212 (Fla. 1985). Fla. Stat. §627.736(4)(b) provides that PIP benefit payments are "overdue" if not paid within 30 days, and subsection (c) provides that all overdue payments will bear interest at the rate of 10% per year. If the sole purpose of the legislature was to establish the date on which prejudgment interest would accrue, the Act would simply state that the benefits were due and payable 30 days after receipt of the reasonable proof of the loss. However, the legislature did not do that and, therefore, the statutory language was obviously intended to do more than simply establish the date upon which prejudgment interest would accrue.

While the insurance companies rely heavily on the rule requiring strict adherence to the statutory language, there is another principle of statutory construction with equal dignity which must also be applied. That is, this Court must construe statutes in harmony with the constitution, see *HOLLEY v. ADAMS*, 238 So.2d 401 (Fla. 1970); *FLORIDA DEPT. OF EDUCATION v. GLASSER*, 622 So.2d 944 (Fla. 1993); and avoid, if possible, relegating statutes to the "constitutional dustbin," *DOE v. MORTHAM*, 708 So.2d 929, 934 (Fla. 1998).

In LASKY, supra, this Court upheld the constitutionality of the No-Fault Act based on the premise that the legislature was providing an alternative remedy compensating Florida citizens for the deprivation of their rights to obtain compensation for intangible damages where no permanent injury occurred. That alternative remedy was the speedy and efficient recovery of the salient economic losses arising from an automobile accident. This Court subsequently noted that to be the central basis on which the constitutionality of the Act was sustained, see CHAPMAN v. DILLON, supra; INDUSTRIAL FIRE v. KWECHIN, supra. If this Court accepts the construction of Fla. Stat. §627.736 argued here by the insurance companies, there will be no prompt payment of those expenses, and the insureds will be relegated to a generic breach of contract action to recover them. That would undermine the premise of LASKY and, thereby, lead to the conclusion that the Act is violative of the access to courts provision of the Florida Constitution, Fla.Const. Art. I §21.

Prior Case Law on the Thirty Day Rule

The rationale behind the holding in the case sub judice was abundantly clear to the court in DUNMORE more than 26 years previously:

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 time 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.

Since DUNMORE, every Florida court that has dealt with the 30-day requirement has also required that the insurance company must investigate its claims within the 30 days or be responsible to pay the bill,² CROOKS v. STATE FARM MUTUAL AUTOMOBILE INS. CO., 659 So.2d 1266 (Fla. 3d DCA 1995) (State Farm is liable to pay medical bills to insured within thirty days of receipt of those bills notwithstanding the fact that the bills were not submitted on a proper claim form); FORTUNE INS. CO. v. PACHECO, 695 So.2d 394 (Fla. 3d DCA 1997) (legislature provided no exceptions to the 30-day time period); MARTINEZ v. FORTUNE INS.

²/In 1998, the legislature amended Fla. Stat. §627.736(6)(b) to permit a tolling period. That amendment provides that, if the insurer requests additional information within 20 days of notice of the covered loss, it may be entitled to extend the mandatory payment date until ten days after receipt of the requested documentation.

CO., 684 So.2d 201 (Fla. 4th DCA 1996) (insurer is required to pay "no-fault" benefits within 30 days of receipt of claim and not within 30 days of medical verification of claim). All of these courts recognized that in order to prevent the No-Fault Act from becoming a "no-pay" plan, an insurance company must act swiftly in arriving at any potential defenses to payment.

While the Defendants and the insurance industry argue that the 30-day rule does not on its face preclude an insurer from arguing that a medical bill is unnecessary, unreasonable and unrelated when the evidence is established after the 30 day period, this contention is erroneous when viewed in light of the legislative intent behind the No-Fault Act. As announced by this Court over 26 years ago, and followed by every district court since, the No-Fault Act was designed to provide for speedy payment of major and salient economic losses suffered by an insured, see LASKY, supra. In addition, it was designed to limit litigation to ensure payment of these "salient economic losses" and to reduce the potential that an accident victim will endure financial hardship as a result of their economic losses.

If an insurance company has an unlimited time to establish defenses to claims for benefits, there is little if any need for the insurance company to make a swift investigation of claims. Instead, the companies will have an incentive not to pay bills and force insureds to litigate over the non-payment of bills. This will result in exactly

what the legislature intended to prevent by the No-Fault Act, i.e., the use of economic hardship to force injured persons to settle their claims at less than full value. Indeed, the legislature sought to reduce the amount of litigation that an insured must endure in order to obtain the economic losses suffered in an automobile accident³ and to reduce the likelihood of financial hardship arising from these economic losses. In order to achieve that purpose, the legislature intended to limit the time period that an insurance company can mount its defense to the payment of those benefits. Not only will such a result ensure that payments for these medical bills are made swiftly, it will prevent an insurer from litigating with an insured unless it made its requisite investigation within 30 days after receipt of the bills.

³/The argument by Appellants and the insurance industry that the only punishment which can be levied against an insurer that does not pay within the 30-day period is interest, attorney's fees and costs, is also meritless in light of the legislative intent behind the No-Fault Act. Indeed, the Act was designed to ensure that there would be payment of bills and a disincentive to file suit, rather than placing a burden on an insured to "take on" its insurance company to pay for economic losses sustained as a result of an automobile collision.

The Thirty Day Rule Does Not Eliminate All Defenses, Nor Does it Sanction Fraud

Moreover, the holding in this case does not eliminate all defenses to claims for medical benefits paid more than 30 days after receipt. The insurer still retains the right to raise coverage defenses. Additionally, if an insured fails to attend an IME, the insurance company may be relieved of its obligation to pay certain no-fault claims, U.S. SECURITY INS. CO. v. SILVA, 693 So.2d 593 (Fla. 3d DCA 1997). If a medical care provider does not provide an accurate bill, the insurance carrier is not responsible for payment, ALLSTATE INS. CO. v. IVEY, 728 So.2d 282 (Fla. 3d DCA 1999). Moreover, if the insured commits a material misrepresentation on an application for insurance, the insurance company would be able to void coverage, Fla. Stat. §627.409.

Rather, the Third District's holding merely establishes that to mount a defense that a bill is not "reasonable, necessary or related," the insurance company must obtain its evidence in a swift manner; within 30 days of receiving the bill.⁴ The holding in this case does not shift the burden of proof in a trial for no-fault benefits or create an irrebuttable presumption. Rather, it requires the insurer to promptly verify whether it can claim that a bill is unnecessary, unreasonable or unrelated. In short, the PEREZ

⁴/There is also the availability of the tolling period provided in the 1998 amendment to Fla. Stat. §627.736(6)(b), see n.2, supra.

holding does not in any way provide that all defenses to a case involving no-fault benefits are abolished.

The insurance companies argue that the holding in the case sub judice will somehow sanction fraud. The court in *FORTUNE INS. CO. v. PACHECO*, supra, 695 So.2d at 394, n.1, noted that the insurer in that case made a similar "parade of horrors" argument. As noted there, if an insurance company believes that a claim is fraudulent, it has other methods to dispute the claim, or to recover for payments that have previously been made. These include filing a claim for fraud with the Division of Insurance Fraud, relief under Fla.R.Civ.P. 1.540(b)(3), or an independent action for fraud as provided in that rule. Additionally, fraudulent conduct on the part of an insured would create a cause of action on behalf of the insurer. The possibility of criminal sanctions is also available to discourage such conduct. Therefore, it is respectfully submitted that the fear of fraud is not a basis on which to reverse the Third District's decision.

CONCLUSION

For the reasons stated above, the Third District's decision should be approved. The 30-day rule must be upheld in order to ensure that Florida citizens have a speedy and efficient means of obtaining compensation for their salient economic losses after an automobile accident. This was the tradeoff which justified this Court's prior holding that the No-Fault Act was constitutional, and to recede from it now would undermine the Act as well as the legislature's intention. To accept the insurance company's argument would regulate the 30-day rule to a grace period for the determination of prejudgment interest, and result in Florida citizens having nothing more than a right to pursue a generic contract action against their insurer in order to obtain compensation for, inter alia, their immediate medical expenses. For these reasons, the Third District's decision should be approved.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY a true copy of the foregoing was furnished to all counsel on attached service list, by mail, this 13th day of July, 2000.

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