

IN THE SUPREME COURT OF FLORIDA

VERON CARAVAKIS,

Plaintiff/Petitioner,

vs.

CASE NO. SC02-198

ALLSTATE INDEMNITY COMPANY,

Defendant/Respondent.

ON REVIEW FROM THE DISTRICT COURT OF APPEAL, SECOND DISTRICT
DCA Case No.: 2D00-4027

**ANSWER BRIEF OF DEFENDANT/RESPONDENT
ALLSTATE INDEMNITY COMPANY**

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STATEMENT OF THE CASE AND FACTS

I. Nature Of The Case

This matter is on review from a Second District Court of Appeal decision denying a petition for writ of certiorari and refusing to review a decision by the circuit court sitting in its appellate capacity. The opinion below is reported at Caravakis v. Allstate Indem. Co., 806 So.2d 548 (Fla. 2d DCA 2001).

II. Statement Of The Case And Facts

Defendant/respondent, Allstate Indemnity Company ("Allstate"), generally agrees with plaintiff/petitioner Veron Caravakis' ("Caravakis") Statement of the Case and Facts. However, Caravakis fails to fully state the basis for the county and circuit courts' rulings that Caravakis lacked standing to bring suit. Both courts reasoned that Caravakis suffered no injury as a result of Allstate's decision not to pay all his medical bills in full.

As the circuit court explained, citing numerous decisions from Florida and other jurisdictions, the "prevalent view" is that no breach of contract occurs, and the insured suffers no damages, "when the insurer pays the amount it determines to be reasonable for a submitted expense and further agrees to defend

and indemnify the insured if he or she is pursued for any balance from such a determination." (Circuit Court Order at 2, 3; DCA R 104, 105.) (citations omitted).

Allstate also disagrees with Caravakis' statement that Allstate "unilaterally reduced" his medical bills to the extent it suggests Allstate paid nothing toward the bills or had no basis for its payment decision. Caravakis established neither contention in the record below. Moreover, this Court's recent decision in United Auto. Ins. Co. v. Rodriguez, 808 So.2d 82 (Fla. 2001), negates Caravakis' suggestion that an insurer must pay *all* medical bills, as opposed to only reasonable and necessary medical expenses. See Part I.B.1, infra.

Caravakis was insured under an Allstate auto policy which provided Personal Injury Protection ("PIP") coverage. (DCA R 15,18.) Under the plain terms of his insurance contract and § 627.736(1), Fla. Stat., Allstate was obligated to pay only 80% of reasonable expenses for necessary medical services incurred as the result of a motor vehicle accident.

Also, Caravakis' policy included Allstate Florida Amendatory Endorsement AIU63-4, which provides:

Unreasonable or Unnecessary Medical Expenses

If an insured person incurs medical expenses which **we** deem to be unreasonable or unnecessary, **we** may refuse to pay for those

medical expenses and contest them.

If the insured person is sued by a medical services provider because **we** refuse to pay medical expenses which **we** deem to be unreasonable or unnecessary, **we** will pay resulting defense costs and any resulting judgment against the insured person.

(DCA R 27, 31, 180, and Caravakis' Brief at 2.) So, Allstate promised to defend and indemnify Caravakis should any medical provider pursue him for unpaid amounts if Allstate determined that a medical charge was unreasonable or unnecessary. (DCA R 27, 31, 180, and Caravakis' Brief at 2.)

As the circuit court noted, it is undisputed that, of the \$2,114 Caravakis' medical provider billed, Allstate covered \$2,027, eighty percent of which it timely paid. (Circuit Court Order at 2; DCA R 104.) As the circuit court stated, "the record shows that [Allstate] did comply with its statutory and contractual obligations when it timely paid Appellant's medical provider eighty percent for all reasonable and necessary medical services." (Id. at 3; DCA R 105.)

Caravakis had every opportunity to submit evidence showing he suffered injury sufficient to confer standing. Yet, Caravakis produced no evidence that: a) he paid out-of-pocket for his unpaid medical bills; b) his medical provider pursued him in any way for any balance due; or c) Allstate's payment decision otherwise harmed him. (Circuit Court Order at 3; DCA

R 105.) Nor did Caravakis submit any evidence that Allstate breached its promise to defend and indemnify him should his medical provider pursue collection activity (which did not occur). (Id.)

SUMMARY OF THE ARGUMENT

The Second District correctly denied certiorari review and refused to reach the merits of the circuit court's grant of summary judgment to Allstate based on Caravakis' lack of standing. In so ruling, the Second District applied the correct standard for certiorari review -- recently reaffirmed by this Court in Ivey v. Allstate Insurance Company, 774 So.2d 679, 682 (Fla. 2000) -- that district courts should grant certiorari *only* when the circuit court decision violates "a clearly established principle of law." As the Second District correctly recognized, no controlling precedent existed on the substantive standing issue, so it had no authority to issue a writ of certiorari.

Instead of citing any controlling precedent, Caravakis argues that the circuit court misapplied Fla. Stat. § 627.736(4)(b), which provides that insurers must pay PIP benefits within 30 days, and Art. I, Sections 21 and 22 of the Florida Constitution, which provide for the right of access to courts and a trial by jury. None of these arguments has merit. Caravakis incorrectly presumes that insurers must pay *all* PIP claims within 30 days. This Court recently rejected that very argument, holding that even if a PIP claim is not paid within 30 days, an insurer may still contest it. Rodriguez, 808 So.2d at

87. The PIP statute requires payment *only* of reasonable and necessary medical expenses. So, only those bills must be paid within 30 days; unreasonable and unnecessary bills need not be paid within 30 days or at all.

Also, Caravakis ignores the fact that, absent standing to bring suit, he could not have been deprived of any right of access to court or a jury trial. Contrary to Caravakis' contention, the circuit court did not violate any clearly established precedent or "misapply the law."

Even if this Court decides to reach the merits here, it should affirm the circuit court's decision. In his arguments on the merits, Caravakis fails to even discuss the substantive standing issue. Instead, he argues that the way the circuit court interpreted Allstate's policy's defense and indemnification provision violates the Florida No-Fault Law; Allstate's policy does not prohibit a PIP suit; and the circuit court's interpretation of the defense and indemnification provision violates public policy. Even if correct, these contentions would not confer standing because Caravakis suffered and can suffer no injury from the conduct he alleges. Indeed, Caravakis utterly fails to address, much less distinguish, the overwhelming number of cases from Florida and other jurisdictions holding that plaintiffs lack standing under

identical circumstances.

ARGUMENT

I. THE SECOND DISTRICT CORRECTLY DENIED CERTIORARI REVIEW, BECAUSE THERE WAS NO CLEARLY ESTABLISHED PRINCIPLE OF LAW ON THE SUBSTANTIVE STANDING ISSUE, SO THE CIRCUIT COURT COULD NOT HAVE "DEPARTED FROM THE ESSENTIAL REQUIREMENTS OF LAW" OR CAUSED A "MISCARRIAGE OF JUSTICE".

A. The Parties Agree About the Correct Standard For Certiorari Review, And The Second District Correctly Applied That Standard In Denying Review.

Much of Caravakis' initial argument is superfluous. It details the history of common law writ of certiorari, but Allstate agrees with Caravakis about the correct standard for certiorari review. (Caravakis' Brief at 10-13.)

Specifically, "[t]he proper inquiry under certiorari review is limited to whether the circuit court afforded procedural due process and whether it applied the correct law." Ivey, 774 So.2d at 682 (citing Haines City Community Development v. Heggs, 658 So.2d 523, 528 (Fla. 1995)). Certiorari is not proper to correct "simple legal error." Id. (quoting Stilson v. Allstate Insurance Company, 692 So.2d 979, 982 (Fla. 2d DCA 1997)).

As Caravakis notes, this Court has repeatedly held that a district court should grant a petition for writ of certiorari only where the circuit court decision resulted in "violation of a clearly established principle of law resulting in a miscarriage of justice." Heggs, 658 So.2d at 529 (citation and

internal quotation omitted). The Second District correctly applied this standard when it denied Caravakis' petition for review. Caravakis v. Allstate Indemnity Company, 806 So.2d 548, 549-50 (Fla. 2d DCA 2001).

B. The Second District Correctly Ruled That No Controlling Precedent Existed Regarding The Substantive Standing Issue, And That, Absent Such Precedent, The Circuit Court Could Not Have Violated A Clearly Established Principle Of Law.

As the Second District correctly ruled, "when established law provides no controlling precedent, the circuit court cannot be said to have violated a clearly established principle of law." Caravakis, 806 So.2d at 549-50. See also Ivey, 774 So.2d at 682-83 (same principle); Stilson, 692 So.2d at 982 (absent controlling precedent, court could not conclude that trial or circuit court violated a "clearly established principle of law").

There was no controlling authority on the substantive standing issue here -- i.e., whether an insured may sue an insurer for failing to pay a medical bill when: 1) the insured never paid the bill, 2) the medical provider never pursued the insured for payment, and 3) the insurer agreed to defend and indemnify the insured in the event the provider did engage in collection activity. As the Second District observed, at the relevant time no Florida appellate cases addressed the Allstate

policy provision, much less how it applied to facts like the ones presented here. See Caravakis, 806 So.2d at 550.

Indeed, Caravakis has yet to cite any controlling authority on this issue. The only on point Florida appellate court decision he cites is Kaklamanos v. Allstate Ins. Co., 796 So.2d 555 (Fla. 1st DCA 2001). Kaklamanos, of course, was decided *after* the circuit court decided this case, and has now been consolidated with Caravakis' case for review by this Court. So, Kaklamanos certainly was not controlling when the Second District ruled. Moreover, for all the reasons in the merits brief Allstate submitted to this Court in Kaklamanos, that case was incorrectly decided and should be quashed.

Put simply, no controlling contrary precedent existed when the circuit court ruled that Caravakis had no standing to bring this action. Accordingly, the circuit court could not have violated any clearly established principle of law, and the Second District correctly denied Caravakis' petition for certiorari on this ground.

C. The Circuit Court Did Not "Misapply" The Law, And Caravakis' Theories Regarding The "Correct" Law Do Not Support His Claim That He Suffered Any Injury.

Instead of citing controlling precedent on the standing issue, Caravakis merely cites provisions from the Florida PIP statute and Constitution which he claims the circuit court

"misapplied." First, he argues he was "damaged" by Allstate's failure to pay the disputed medical expenses within 30 days, as required by the PIP statute. See Fla. Stat. § 627.736(4)(b); Caravakis' Brief at 13-14, 19-20. Second, Caravakis argues that Allstate's policy is one indemnifying against liability, as opposed to loss, so he was harmed simply because he "receive[d] bills." (Id. at 17-19.) Third, Caravakis argues he was injured because he was denied access to the courts and a right to trial by jury. (Id. at 20-21.)

According to Caravakis, the circuit court misapplied the law by failing to recognize his "injury" under these theories, which resulted in a "miscarriage of justice" sufficient to justify certiorari review. As shown below, however, none of these theories has any merit.

1. Caravakis Suffered No Injury Simply Because The Disputed Amounts Of His Medical Bills Were Not Paid Within 30 Days.

Caravakis argues he "suffered damages," and so has standing, because Allstate did not pay all his medical bills in full within 30 days. The fundamental flaw in Caravakis' "30-day" theory is his mistaken presumption that insurers must pay the full amount of *all* medical bills within 30 days. Yet, this Court expressly rejected that very argument in Rodriguez, 808 So. 2d at 87. This Court explained that, while "the plain

language of the [PIP statute] provides that an insurer is subject to specific penalties for an 'overdue' payment: ten percent interest and attorneys' fees, *[n]othing in the statute provides that once a payment becomes overdue the insurer is forever barred from contesting the claim.*" Id. (emphasis added).

In other words, if a claim is not paid within 30 days, that does not automatically entitle the insured to PIP benefits. To the contrary, the PIP statute expressly provides that insurers are obligated to pay claims *only* for medical treatment that is reasonable and necessary. See § 627.736(2), Fla. Stat.

The cases Caravakis cites to support his "30-day" theory are no help to him. Caravakis relies on Kaklamanos, which was not in existence at the time of the circuit court's decision, is now on review before this Court, and was incorrectly decided.

Caravakis also relies on State Farm Mut. Auto. Ins. Co. v. Lee, 678 So.2d 818 (Fla. 1996). (Caravakis' Brief at 14.) But in Lee, this Court merely held that the statute of limitations for failure to pay PIP benefits begins to run when the insurer breaches its obligation to pay, and that breach occurs once 30 days pass "and no benefits were paid on the claim, *assuming they were properly due[.]*" Lee, 678 So.2d at 821 (emphasis added). Nothing in Lee suggests that insureds can bring suit even if they have suffered no injury. To the contrary, the limitations

period begins to run only if the unpaid benefits are "properly due." Id. Or, in other words, "if [PIP] benefits are not due, they cannot be 'overdue'." AIU Ins. Co. v. Daidone, 760 So.2d 1110, 1112 (Fla. 4th DCA 2000).

Here, of course, Allstate disputes that the relevant medical expenses are due at all. And nothing in the record indicates that Caravakis' medical provider disagrees.

Finally, Caravakis cites Dunmore v. Interstate Fire Ins. Co., 301 So.2d 502 (Fla. 1st DCA 1974), for the proposition that there "is no provision in the statute to toll [the 30-day] time limitation," and that 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." (Caravakis Brief at 14.)

Dunmore is distinguishable because the insurer there paid nothing for Dunmore's medical bills within 30 days, even though it did not dispute Dunmore's entitlement to PIP benefits. 301 So.2d at 502. See, e.g., Daidone, 760 So. 2d at 1112 (distinguishing Dunmore on the ground that there was no dispute in that case that benefits were owed). By contrast, here, Allstate paid the overwhelming majority of Caravakis' bills within 30 days, but disputed Caravakis' entitlement to PIP

benefits for the small amount it did not pay.

Nothing in Dunmore suggests that, just because 30 days have passed, an insurer must provide PIP benefits for unreasonable or unnecessary bills it would not otherwise have to pay. As this Court emphasized in Rodriguez, Allstate had every right to dispute Caravakis' bills. See Rodriguez, supra; see also Derius v. Allstate Indem. Co., 723 So.2d 271 (Fla. 4th DCA), rev. denied, 719 So.2d 892 (Fla. 1998) ("an insurer is not liable for any medical expense to the extent that it is not a reasonable charge for a particular service or if the service is not necessary").

Indeed, Caravakis never explains how the passage of 30 days could possibly have injured him when he has not paid the disputed bills, his medical provider never pursued him for the balance, and, in all events, his Allstate policy's defense and indemnification provision fully protects him from any collection activity.

Notably, like the Florida statute, the Texas and Maryland PIP statutes require insurers to pay benefits within 30 days. Tex. Ins. Code art. 5.06-3(d) ("[a]ll payments of benefits prescribed under this Act shall be made periodically as the claims therefor arise and within thirty (30) days after satisfactory proof thereof"); Md. Ins. Code § 19-508 (same).

Even so, Texas courts have dismissed claims identical to Caravakis' because the plaintiffs failed to allege actual injury. See Gloria v. Allstate County Mutual Insurance Company, No. SA-99-CA-676-PM (W.D. Tex. Sept. 29, 2000) (Appendix 1); Noah v. Government Employees Ins. Co., No. SA-00-CA-018 (W.D. Tex. Apr. 9, 2001) (Appendix 2). And a Maryland court found a named plaintiff not a member of the class he sought to represent for the same reason. Ostrof v. State Farm Mut. Auto. Ins. Co., 200 F.R.D. 521 (D. Md. 2001).

This case is no different. The circuit court did not "misapply the law" by failing to apply Caravakis' erroneous 30-day theory.

2. Allstate's Policy Does Not Indemnify Against Liability, As Opposed To Loss.

Again relying heavily on Kaklamanos, Caravakis next argues that the circuit court "misapplied the law" by failing to recognize that Allstate's policy is one indemnifying against liability, as opposed to loss. Based on this theory, Caravakis argues he "suffered damages" simply because he received medical bills, "owes money" and "remains liable" for those bills. (Caravakis' Brief at 17-19.)

Caravakis' argument is flawed for the same reasons as the First District's decision in Kaklamanos. Like the First District, Caravakis cites no authority for his claim that the

PIP portion of his policy provides indemnity against liability. Caravakis also relies on language from Gaines v. McArthur, 254 So.2d 8 (Fla. 3d DCA 1971), for his distinction between the types of indemnification, but omits the discussion immediately thereafter:

Whether a contract is one of indemnity against liability or against loss must necessarily depend upon its terms and the intent of the parties. Contracts of indemnity are, however, strictly construed, *unless it clearly appears otherwise, the contract will be held to be against loss.*

Gaines, 254 So.2d at 10 (quoting Case Comment, 24 Calif. L. Rev. 193 (1936) (emphasis added)).

In other words, just as the First District did, Caravakis ignores Florida's presumption that a contract of indemnity is one against loss, not against liability. Given this presumption, and the fact that nothing in the contract "clearly appears otherwise," the PIP portion of Allstate's policy must be read to insure against loss, not liability. (DCA R 27, 31, 180, and Caravakis' Brief at 2.) Even if Allstate's policy were a policy of indemnity against liability, however, that would not confer standing upon Caravakis. Caravakis still must suffer damages to have standing. That an expense or a debt is incurred, or that liability for payment attaches, does not create actual injury particularly here, where Caravakis paid

nothing for the "debt," and where even if his medical provider were to pursue him for the "debt," his policy's defense and indemnification provision would fully protect him.

Significantly, even under Caravakis' theory, he could not possibly suffer any injury here because the "debt" is for bills the insurer disputes as unreasonable or unnecessary. Caravakis states that the PIP statute "makes Allstate an 'indemnitor against liability' for reasonable and necessary medical expenses." (Caravakis' Brief at 18 (emphasis added)). So, as even Caravakis has argued, Allstate clearly is *not* an indemnitor against liability for unreasonable or unnecessary medical expenses. To the contrary, the PIP statute gives Allstate the right to contest such expenses. Rodriguez, supra. In any event, even if the "debt" is someday found to be due, Allstate, not Caravakis, would defend him and pay it, so not only has Caravakis suffered no current injury, he also can have no possible injury in the future.

3. Caravakis Was Neither Denied Access To The Courts Nor Deprived of Any Right To A Jury Trial.

Caravakis' argument that the circuit court's ruling was a "miscarriage of justice" because it denied him access to the courts and deprived him of the right to a jury trial (Caravakis' Brief at 21) also fails, because Caravakis again ignores the

standing requirement.

The Florida constitutional right of access to courts does not open Florida courts to *all* persons who want to file suit. Rather, the courts are "open to every person *for redress of any injury.*" Art. I, § 21, Fla. Const. (emphasis added); Caloosa Property Owners Ass'n v. Palm Beach Cty. Bd. of Com'rs, 429 So.2d 1260, 1266-67 (Fla. 1st DCA 1983)(Art. I, § 21 "provides that Florida courts shall be open to every person for redress of any injury").

So, the circuit court did not rob Caravakis of his "day in court." Rather, he is not entitled to a day in court because he cannot show he suffered any actionable injury and so has no standing. If a plaintiff cannot establish subject matter jurisdiction because he cannot demonstrate standing, that does not amount to a denial of access to the courts or the right to a jury trial. If it did, the standing requirement would simply cease to exist.

In sum, no miscarriage of justice occurred here. There was no denial of access to court or to a jury trial. The circuit court violated no controlling precedent on standing, nor did it misapply the law.

II. IF THIS COURT DECIDES TO REACH THE MERITS OF THE CIRCUIT COURT DECISION, THE CIRCUIT COURT CORRECTLY AFFIRMED THE COUNTY COURT RULING THAT CARAVAKIS LACKED STANDING TO SUE ALLSTATE OVER A DISPUTED MEDICAL BILL WHEN HE PAID NOTHING FOR THE MEDICAL BILL, HIS MEDICAL PROVIDER DID NOT PURSUE HIM IN ANY WAY FOR THE UNPAID BALANCE, AND HIS INSURANCE POLICY'S DEFENSE AND INDEMNIFICATION PROVISION FULLY PROTECTED HIM FROM ANY PROVIDER COLLECTION ACTIVITY.

The Second Circuit correctly rejected Caravakis' petition for certiorari review and refused to reach the merits of this case. If this Court decides to reach the merits, however, the circuit court's decision should be affirmed.

Even when arguing the merits, Caravakis fails to address the substantive standing issue on which the county court's decision was based. He instead argues: 1) the circuit court's interpretation of Allstate's defense and indemnification provision violates the Florida No-Fault Law; 2) Allstate's policy does not prohibit a PIP suit by Caravakis; and 3) the circuit court's interpretation of the policy's defense and indemnification provision violates Florida public policy. As shown below, these arguments are unfounded.

A. The Circuit Court's Interpretation Of Allstate's Policy Language Is Wholly Consistent With The Florida No-Fault Law.

Caravakis claims that the way the circuit court interpreted Allstate's defense and indemnification provision violates the PIP statute. (Caravakis' Brief at 23-29.) He utterly fails to

support this argument.

First, Caravakis contends that if an insurer "imposes any additional restrictions or requirements on its insureds than are required through the [PIP] statute," the policy must be enforced as if it complied with the statute regardless of the policy's terms. (Id. at 23-24.) This argument is a red herring because, far from imposing restrictions on its insureds, Allstate's defense and indemnification provision provides added protection -- a promise that Allstate will defend and indemnify insureds should medical providers pursue collection activity against them. Obviously recognizing that this provision benefits him, Caravakis states "it is not so much the language of the Allstate amendatory endorsement that is objectionable," but the circuit court's interpretation of it. (Id. at 25.) He then argues, without citing any authority, that the way the circuit court interpreted the amendatory endorsement violates the PIP statute by "prohibiting an insured from filing a PIP suit." (Id.) Yet, it is not the circuit court's interpretation that prohibits him from maintaining his suit; rather, as the circuit court recognized, it is Caravakis' own failure to show he suffered any actionable injury.

Caravakis next argues that the circuit court interpreted the defense and indemnification provision in a way that violates "an

objective of the PIP statute which is to insure prompt payment of PIP claims." (Caravakis' Brief at 25-26.) Essentially, this argument only restates Caravakis' erroneous contention that insurers must pay *all* PIP claims, as opposed to only reasonable and necessary claims, within 30 days.

None of the cases Caravakis cites requiring prompt payment of PIP claims supports his argument that the circuit court's ruling violated the PIP statute. For instance, Caravakis cites Nationwide Mut. Fire Ins. Co. v. Pinnacle Medical, Inc., 753 So.2d 55 (Fla. 2000), and Lasky v. State Farm Ins. Co., 296 So.2d 9 (Fla. 1974), but neither opinion even remotely suggests that the statute requires payment of *all* PIP claims.

While Lasky discussed the PIP statute's prompt payment objective, it also specifically acknowledged the requirement that medical expenses must be reasonable and necessary. In fact, in Lasky, this Court expressly recognized the wisdom of this requirement:

We also deem worthy to note that § 627.736(1) and (1)(a) specify as to medical expenses that these must be such as are "reasonable" and that such expenses shall be "for necessary medical, etc." services. Strict observance of these wise legislative predicates applying to the \$1,000 level should serve to meet the arguments that the cost to the "rich man" easily exceed such a threshold while the services "that a poor man cannot afford will always be under the

threshold." In this day of ever-increasing medical and hospital costs, the \$1,000 minimum seems less than illusory.

Lasky, 296 So.2d at 15. Far from requiring "speedy payment" of PIP claims for bills insurers dispute as unreasonable or unnecessary, this Court recognized in Lasky that "strict observance" of the reasonableness/necessity requirement benefits, rather than harms, insureds because it prevents needless depletion of PIP coverage. Id.

Caravakis also cites Dunmore, supra, for the proposition that if PIP insurers could toll the 30-day requirement, that would render the "no-fault" statute a "no-pay" plan. (Caravakis Brief at 27.) Dunmore is distinguishable, as discussed above, because Dunmore's insurer paid nothing for his medical bills within the 30 days (301 So.2d at 502), while Allstate paid most of Caravakis' medical expenses and only declined to pay those few it had the right to dispute under the PIP statute. Accordingly, the "'no-pay' plan" argument is factually and legally untenable.

Instead of using facts to support his argument, Caravakis speculates that the circuit court's ruling will result in "all PIP disputes [being in the form of a health care provider suing the PIP insured and the insurance carrier stepping in to defend the insured." (Caravakis' Brief at 28.) Supposedly, this would

prohibit speedy payment of PIP benefits, because the PIP insured "would have to hope to be sued by his or her medical provider." (Id.) If the provider chose not to sue, Caravakis posits, "not only would there be the inability to obtain speedy payment, there would be an inability to obtain any payment whatsoever." (Id.)

The undisputed facts of Caravakis' own case negate this argument. When, as here, the medical provider does not dispute the insurer's payment decision and, in fact, apparently accepts it, the insurer obviously need not make any payment, much less a "speedy payment." And, contrary to Caravakis' contention, if an insured or provider cannot obtain payment for an unreasonable or unnecessary medical expense, that certainly does not violate the PIP statute.

Caravakis' reliance on Government Employees Ins. Co. v. Gonzalez, 512 So.2d 269 (Fla. 3d DCA 1987), is equally flawed. Citing Gonzalez, Caravakis claims "the foundation of the legislative scheme is to provide swift and virtually automatic payment so that the injured insured may get on with his life without undue financial interruption." (Caravakis Brief at 28 (quoting Gonzalez)). Unlike Allstate here, however, the insurer in Gonzalez "consistently maintained "it *undoubtedly owed* [\$10,000 in PIP benefits] to someone" -- either, the insured or

his medical provider, which had a lien for its bill -- but failed to pay benefits for a long time. 512 So.2d at 270 (emphasis added). Under these circumstances, the Gonzalez court imposed attorneys' fees as a penalty for the insurer's delay in paying benefits it agreed were due.

In stark contrast, Allstate has consistently maintained that it does not owe the disputed amounts of Caravakis' medical bills. Also, the medical provider in Gonzalez obtained a lien for Gonzalez' unpaid medical bills, but Caravakis' medical provider has not pursued him (or Allstate) for any unpaid amounts. So, Caravakis suffered no "financial interruption," nor would he even if his medical provider pursued him for collection, because Allstate's promise to defend and indemnify fully protects him.

Caravakis next argues that the circuit court's interpretation of Allstate's policy violates the PIP statute by "denying a PIP insured the right to have the dispute determined by the trier of fact." (Caravakis' Brief at 28.) This essentially reiterates his baseless argument that he was deprived of the right to a jury trial.

At the outset, no provision in the PIP statute entitles insureds (or insurers) to have a jury decide disputes. Even if such a provision existed, Caravakis still could not present his

case to a jury unless and until he established the threshold requirements for standing, which he cannot do.

Notably, instead of alleging facts showing injury, Caravakis wildly speculates that the circuit court's ruling will violate some hypothetical insureds' right to have a jury determine a PIP dispute - particularly, Caravakis claims, "in cases where the healthcare provider decides not to sue the PIP insured and would simply choose to withhold any further treatment and report the indebtedness to a credit agency." (Caravakis' Brief at 28.) Caravakis' conjecture only highlights his lack of standing. The hypothetical insured's provider stopped the insured's treatment. In contrast, Caravakis presented no evidence that his medical provider withheld further medical treatment or even reported any indebtedness he might have to a credit agency.

Finally, Derius v. Allstate Indem. Co., 723 So.2d 271 (Fla. 4th DCA 1998), and Pinnacle, supra, also do not support Caravakis' position on the right to a jury. In Derius, the Fourth District merely held that a trial court need not define the term "necessity" when instructing the jury about the necessity of medical expenses. Derius, 723 So.2d at 274. And in Pinnacle, this Court found a mandatory arbitration statute acquiring medical providers (who were assignees of PIP claims) to arbitrate breach of contract claims and awarding the

prevailing party attorney fees unconstitutional. Nothing in Derius or Pinnacle suggests that a PIP claimant is entitled to a jury trial, or to bring a lawsuit, absent a threshold showing of injury.

Caravakis tries to use Pinnacle to support another hypothetical scenario regarding possible effects of the circuit court's ruling. According to Caravakis, the circuit court's ruling, like the provision this Court found unconstitutional in Pinnacle, "may encourage healthcare providers to require payment from PIP insureds at the time services are rendered, rather than risk having to file suit against the insured and going up against defense counsel and potential liability for costs and fees through a proposal for settlement." (Caravakis' Brief at 29.) "If this were to occur," Caravakis continues, "the PIP insured would be denied the right to have the issue determined by a jury, due to the healthcare provider's response to the situation." (Id.)

First, the situation in Pinnacle is not analogous to the hypothetical. The provision in Pinnacle arbitrarily distinguished between medical providers and insureds, subjecting only the medical providers to possible attorneys' fees if the insurer prevailed in arbitration. It was that distinction this Court thought would result in providers' requiring payment for

services up front, rather than risk collection through arbitration. Here, of course, there is no such arbitrary distinction.

Second, Caravakis' hypothetical scenario is exactly that -- hypothetical. It does not show any injury to Caravakis himself. Indeed, an equally plausible (and more likely) scenario is that the insured's medical provider accepts the insurer's payment decision -- as Caravakis' medical provider seems to have done. Then, litigating the PIP claim would be pointless, so the PIP insured would certainly not be deprived of any right to a jury trial.

B. Caravakis' Inability To Show Injury, Not Allstate's Insurance Policy, Prohibits Him From Bringing This Lawsuit.

Caravakis devotes no less than three pages to arguing that Allstate's defense and indemnification provision contains no language preventing him from filing suit. Accordingly, Caravakis theorizes, the circuit court's ruling was "in direct violation of the policy itself." (Caravakis' Brief at 29-33.) This argument is another red herring. It is Caravakis' lack of standing that preclude his suit here, *not* the policy provision.

Caravakis cites a single county court case, Mitch v. State Farm Mut. Auto. Ins. Co., Case No. 99-4033 (Fla. Pinellas Cty.

Ct. Oct. 29, 1999), for the proposition that an insured should not have to wait until the medical provider initiates collection efforts to sue the insurer. Notably, nothing in Mitch supports Caravakis' argument. As the circuit court noted, Mitch "does not cite to any authority and is not the prevalent view." (Circuit Court Order at 3; DCA R 105.) Rather, the prevalent view is that insureds lack standing to sue their insurers in cases just like this one.

C. The Overwhelming Number Of Cases Directly On Point Show The Circuit Court Correctly Ruled That Caravakis Suffered No Injury, And Therefore Lacked Standing To Bring This Lawsuit.

The real substantive issue in this case, which Caravakis avoids, is standing. Without standing, a person may not properly invoke the jurisdiction of the court. See, e.g., Fla. Dep't of Agric. & Consumer Servs. v. Miami-Dade County, 790 So.2d 555, 558 n.4 (Fla. 3d DCA 2001) (citing Chiles v. Thornburgh, 865 F.2d 1197, 1209-1211 (11th Cir. 1989)). To establish standing, a party must show he has suffered an actual or tangibly threatened injury. Id. As the county court correctly ruled, Caravakis failed to show he suffered any injury.

Caravakis never submitted evidence that he paid out-of-pocket for the unpaid amounts of his medical bills, that his medical providers pursued him in any way, or that he would

suffer any injury if they did, given the defense and indemnification provision in his policy.

Courts in Florida have repeatedly held that plaintiffs in substantively identical cases lacked standing because they suffered no injury. See, e.g., Griffith v. State Farm Mut. Automobile Ins. Co., 8 Fla. L. Weekly Supp. 411b (Fla. 6th Cir. Ct. Jan. 31, 2001); Dunn v. State Farm Mut. Automobile Ins. Co., 8 Fla. L. Weekly Supp. 132a (Fla. 6th Cir. Ct. Oct. 27, 2000); Kochinski v. State Farm Fire and Cas. Co., 7 Fla. L. Weekly Supp. 807a (Fla. Hillsborough Cty. Ct. Sept. 20, 2000); McQueen v. Allstate Indemnity Company, 6 Fla. L. Weekly Supp. 85 (Fla. Broward Cty. Ct. Dec. 7, 1998). But see Burgess, supra.

And, in cases directly on point, courts in at least five other jurisdictions have ruled the same way:

1. Texas

The United States District Court for the Western District of Texas dismissed plaintiffs' claims in Gloria v. Allstate County Mutual Insurance Company, No. SA-99-CA-676-PM (W.D. Tex. Sept. 29, 2000), because they failed to allege any injury-in-fact as a result of Allstate's failure to pay their medical bills. (Appendix 1). The Gloria plaintiffs alleged they "suffered damages and liability to the extent of their unpaid bills plus interest," and were "subject to legal liability for

the unpaid balance of their bills." Gloria, at 17.

The court ruled that plaintiffs failed to allege injury:

What plaintiffs have pleaded is the possibility that at some time in the future their "property" will be injured by Allstate's determination of reasonable medical expenses. That the harm is not imminent or actual is particularly obvious in light of plaintiffs' allegations that Allstate's allegedly illegal conduct occurred in 1997 and 1998 and, even though the fact that plaintiffs twice amended their complaint, the amended complaint contains essentially the same general allegations regarding possible injury as the original complaint filed in June 1999. There are no allegations that a health care provider who was not fully reimbursed by Allstate has challenged the determination of what are reasonable expenses, billed plaintiffs for the balance, threatened to sue for the balance, or threatened to resort to a collection agency for payment of the balance.

Gloria, 17-18.

Similarly, in Noah v. Government Employees Ins. Co., No. SA-00-CA-018 (W.D. Tex. Apr. 9, 2001), the court found that the plaintiff lacked standing to sue her insurer for unpaid PIP benefits, because when she filed her lawsuit she had not paid anything to her medical provider, and her fear that the provider might pursue her for unpaid bills in the future was "too speculative an injury to be the basis of an in-fact injury." Noah, 11. (Appendix 2).

2. Michigan

Several insureds sued their insurers in Michigan, alleging

that the insurers wrongfully failed to pay no-fault/medical payments benefits. McGill v. State Farm Mutual Auto. Ins. Co., 207 Mich. App. 402, 526 N.W.2d 12, 13 (1994). The insurers asserted the charges were unreasonable and argued that plaintiffs lacked standing because they had suffered no injury, and, in fact, would never suffer injury in light of defense and indemnification policy provisions like the one in this case. Id.

The court held that the insureds had suffered no injury and, moreover, that no injury could even be threatened in light of the defense and indemnification provisions. Id. at 14. Accordingly, the court affirmed summary judgment for lack of standing. Id.

Relying on McGill, another Michigan court of appeals held that an insured lacked standing to bring suit when an insurer refused to pay allegedly unreasonable medical bills. See LaMothe v. Auto Club Ins. Assoc., 214 Mich. App. 577, 543 N.W.2d 42, 43 (1995), app. denied, 455 Mich. 950, 554 N.W.2d 916 (1996). According to the LaMothe court, there could be no injury because a defense and indemnification provision in the policy, like the one here and in McGill, "remove[d] the insured from jeopardy." Id.

3. Massachusetts

A Massachusetts appellate court also found McGill and LaMothe persuasive, holding that where an insurer "issue[s] a binding statement of indemnification," an insured may not bring suit as an "unpaid party." Ny v. Metro. Property & Casualty Ins. Co., 1998 WL 603138, *2-3 (Mass. App. Ct. Sept. 2, 1998). (Appendix 3). The Ny court stressed that the insured could not be injured because he could not possibly suffer any damage, given the indemnification promise.

4. Missouri

A Missouri court also decided this issue in Allstate's favor. See Kinnard v. Allstate Ins. Co., No. 992-00812 (Mo. Cir. Ct. Nov. 15, 1999). (Appendix 4). That court dismissed a named plaintiff's individual claim because he failed to allege he had to pay any amount for medical bills Allstate declined to pay in full:

The pleading fails to state facts indicating how Bush's submission of [medical bills] to Allstate, and Allstate's refusal to pay "in full" gave rise to damages of \$13.00. Although Bush allegedly incurred expenses, there is no allegation that he was required to pay amounts, contrary to the terms of the Allstate policy. The mere conclusion that Bush had damages of \$13.00 does not show how that sum relates in any way to Allstate's alleged actions. The breach of contract claim of plaintiff Bush is therefore dismissed for failure to state a claim.

Kinnard, at 5-6.

5. Maryland

Similarly, in Ostrof v. State Farm Mut. Auto. Ins. Co., 200 F.R.D. 521 (D. Md. 2001), the court ruled that a named plaintiff seeking to represent a class of insureds whose PIP claims State Farm allegedly wrongfully denied was "either not a member of the proposed class or may be subject to a unique defense." The court so ruled because it was "uncontested that he [the plaintiff] has never had to pay his health care providers the amounts that were denied him," and "[n]o suits for the fees are pending against him nor, apparently, are any such suits imminent." Ostrof, 200 F.R.D. 521.

All these cases, like the many Florida circuit and county court cases cited above, support the circuit court's ruling that Caravakis lacked standing. Yet, Caravakis does not even address these cases, much less attempt to distinguish them.

Put simply, insureds lack standing to sue insurers for failing to pay allegedly unreasonable or unnecessary medical expenses in full where, as here, the insurer has expressly agreed to defend and indemnify the insured in the event of any collection activity. If this Court reverses the circuit court's decision, as Caravakis requests, such a ruling would effectively remove one of the most fundamental requirements for access to courts -- standing. PIP lawsuits will flood the courts, which

would contravene the legislative intent of the PIP statute.

Notably, when it revised the Florida PIP statute, the Florida Legislature found that the statute "is intended to deliver medically necessary and appropriate medical care quickly and without regard to fault, and *without undue litigation or other associated costs,*" and that this intent has been frustrated "at significant cost and harm to consumers by, among other things, fraud, medically inappropriate over-utilization of treatments and diagnostic services, inflated charges, and other practices" described in the Florida Grand Jury "Report on Insurance Fraud Related to Personal Injury Protection." See 2001 Fla. Laws ch. 271, 2001 Fla. SB 1092 (citing Second Interim Report of the Fifteenth Statewide Grand Jury). Reversing the circuit court's decision would only encourage such groundless lawsuits. Accordingly, if this Court reaches the merits of this case, it should affirm the circuit court's decision.

CONCLUSION

For all the foregoing reasons, defendant/respondent, Allstate Indemnity Company, respectfully requests this Court to affirm the Second District Court of Appeal's decision denying certiorari review and, if the Court reaches the merits of this case, to affirm the circuit court's decision upholding summary judgment in Allstate's favor based on plaintiff/petitioner Veron Caravakis' lack of standing.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the above and foregoing "Answer Brief of Defendant/Respondent Allstate Indemnity Company" has been furnished to **TONY GRIFFITH, ESQUIRE**, Tanney, Eno, Tanney, Griffith & Ingram, P.A., 2454 McMullen Booth Road, Building C, Suite 501-A, Clearwater, Florida 33759, and **DAVID B. SHELTON, ESQUIRE**, and **CANDY L. MESSERSMITH, ESQUIRE**, Rumberger, Kirk & Caldwell, Post Office Box 1873, Orlando, Florida 32802-1873 (Counsel for Amicus, National Association of Independent Insurers), by First Class U.S. Mail this 21st day of June, 2002.

ANTHONY J. PARRINO

CERTIFICATE OF COMPLYING WITH FONT REQUIREMENTS

I **HEREBY CERTIFY** that the foregoing "Answer Brief of Defendant/Respondent Allstate Indemnity Company" has been prepared in Courier New 12-point font as required by Fla. R. App. P. 9.210(a)(2).

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APPENDIX

1. Gloria v. Allstate County Mutual Insurance Company, No. SA-99-CA-676-PM (W.D. Tex. Sept. 29, 2000)
2. Noah v. Government Employees Ins. Co., No. SA-00-CA-018 (W.D. Tex. Apr. 9, 2001)
3. Ny v. Metro. Property & Casualty Ins. Co., 1998 WL 603138, *2-3 (Mass. App. Ct. Sept. 2, 1998)
4. Kinnard v. Allstate Ins. Co., No. 992-00812 (Mo. Cir. Ct. Nov. 15, 1999)