IN THE DISTRICT COURT OF APPEAL
FOR THE FIRST DISTRICT, STATE OF FLORIDA

Case No.: 1D13-1355

KEVIN M . MCCARTY, in his official capacity as the Commissioner of the FLORIDA OFFICE OF INSURANCE REGULATION,

APPELLANT,

vs.

ROBIN A. MYERS, D.C., et al.,

APPELLEES.

AMICI CURIAE BRIEF OF PROPERTY CASUALTY INSURERS ASSOCIATION OF AMERICA, FLORIDA INSURANCE COUNCIL, AND AMERICAN INSURANCE ASSOCIATION, IN SUPPORT OF APPELLANT KEVIN MCCARTY

COLODNY, FASS, TALENFELD, KARLINSKY, ABATE & WEBB, P.A.
MARIA ELENA ABATE
Florida Bar No. 770418
mabate@cftlaw.com
MATTHEW C. SCARFONE
Fla. Bar No. 94306
mscarfone@cftlaw.com
Attorneys for *Amici Curiae* Property Casualty Insurers Association of America, Florida Insurance Council, and American Insurance Association
One Financial Plaza, 23rd Floor
100 Southeast Third Avenue
Fort Lauderdale, Florida 33394
Telephone: (954) 492-4010

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INTRODUCTION

Amici Curiae, Property Casualty Insurers Association of America ("PCI"), The Florida Insurance Council ("FIC"), and American Insurance Association ("AIA"), submit this *Amici Curiae* Brief in support of Appellant, Kevin McCarty in his official capacity as Commissioner of the Florida Office of Insurance Regulation ("OIR").

The trial court's order granting a temporary injunction on March 15, 2013, undermines the legislature's goal of decreasing PIP premiums by reducing fraud. The order creates substantial uncertainty in the marketplace regarding the state of the law,[1] and if not reversed, will do nothing to help provide affordable PIP insurance in Florida. PIP fraud has become epidemic, and if the trial court's order is affirmed, this rampant fraud will continue unabridged, leaving insureds unable to obtain affordable PIP coverage.

BACKGROUND AND PROCEDURAL HISTORY

Before this Court is an order of the Leon County Circuit Court that purports to enjoin the enforcement of recent legislation duly enacted by the Florida Legislature. Appellees filed this action on January 8, 2013, against Kevin M. McCarty, in his official capacity as Commissioner of the OIR. Appellees are two

[1] In addition to creating uncertainty regarding the state of the law, this order creates uncertainty regarding its geographic scope. The order was entered by a trial court in Leon County, but purports to enjoin enforcement of HB 119, which applies to all insurers in Florida. Understandably, this order leaves insurers uncertain as to its actual scope and effect.

massage therapists, an acupuncturist and a chiropractor. Also named as parties below are the fictitious "John Doe," representing similarly situated medical providers, and "Jane Doe," representing citizens of Florida who are, were, or will be injured in motor vehicle collisions.

Appellees sought an order enjoining the OIR from "enforcing" the provisions of House Bill 119 ("HB 119"), which amends the Florida Motor Vehicle No-Fault Law, Sections 627.730 - 627.7405, *Fla. Stat.* (the "no-fault law"), modifying the personal injury protection ("PIP") benefits that insurers are required to provide. Appellees argued that HB 119 is unconstitutional on several grounds, including that it unconstitutionally restricts access to courts, in violation of Article I, Section 21 of the Florida Constitution. The trial court granted Appellees' motion in part, but only as it related to their "access to courts" argument, opining that after the amendments requiring claimants to seek treatment within fourteen days, limiting coverage to $2,500 for non-emergency services, and excluding treatment by acupuncturists and massage therapists, the PIP system is no longer a reasonable alternative to tort actions. Order Granting in Part Motion for Temporary Injunction (attached as Appendix 1, and hereinafter referred to as "A.1"). Finding that Appellees' demonstrated a substantial likelihood of success on the merits of this claim, the court entered the injunction at issue on appeal. *Id.*

Appellant, Kevin McCarty, explains the latent procedural and technical defects in the trial court's order – and Appellees' case – at length in his initial brief. *Amici* agree that the Commissioner of the OIR is not the proper defendant in such an action, that the injunction is facially deficient, and that Appellees lack standing to raise an "access to courts" argument, as there is no identifiable claimant whose access to courts has been limited in any way.

Further, the trial court's order encroaches upon the legislature's role, and purports to invalidate recent amendments to the no-fault law, which were duly enacted through the legislative process for strong public policy reasons. Florida insurers have amended their forms and rates to comply with the new law, and have revamped their PIP coverage in reliance on HB 119. If not reversed, trial court's order will thrust the industry into a state of uncertainty and thwart the legislature's goal of decreasing premiums for consumers by reducing fraud.

INTEREST OF AMICI CURIAE

PCI is composed of more than 1,000 member companies, representing the broadest cross-section of insurers of any national trade association. PCI members write more than 190 billion dollars in annual premium, representing 40 percent of the nation's property casualty insurance. Member companies write 46 percent of the U.S. automobile insurance market, 32 percent of the homeowners market, 38 percent of the commercial property and liability market, and 41 percent of the

private workers compensation market, including a significant portion of the property and casualty insurance market in Florida.

FIC is Florida's largest company trade association, representing 35 insurers groups – consisting of 141 companies – which write over 15.6 billion dollars a year in premium volume and provide all lines of coverage. FIC's mission is to provide value through education, research, and representation before consumer, legislative, regulatory, and judiciary organizations. FIC is dedicated to the highest standards of business ethics and professionalism, committed to promoting and protecting the viability of the insurance market, resolved to earn consumer confidence and trust, and determined to foster a positive public image of the insurance community.

AIA is a leading national trade association representing over 300 major property and casualty insurance companies that collectively underwrote more than 117 billion dollars in direct property and casualty premiums in 2008, including almost 7 billion dollars in premium (and over 30 percent of commercial lines of insurance) in Florida. AIA members, ranging in size from small companies to the largest insurers with global operations, underwrite virtually all lines of property and casualty insurance. On issues of importance to the property and casualty insurance industry and marketplace, AIA advocates sound and progressive public policies on behalf of its members in legislative and regulatory forums at the federal and state levels and files *amicus curiae* briefs in significant cases.

SUMMARY OF ARGUMENT

The PIP system has become rampant with fraud and abuse. In a December 2011 Report on Florida Motor Vehicle No-Fault Insurance, Florida's Insurance Consumer Advocate noted that paid PIP losses per car, per year increased more than 66 percent over the past 2.5 years, and that if this trend continued, PIP premiums would double every 3 years. *See* Office of the Insurance Consumer Advocate, *Report on Florida No-Fault Insurance (Personal Injury Protection)*, p.6 (Dec. 2011) (attached as Appendix 2 and hereinafter referred to as "A. 2."). Further, the Insurance Consumer Advocate explained that this increase in PIP losses cannot be attributed to a corresponding increase in accidents, as the frequency of accidents has decreased consistently over the same time period. *Id.* at 7. From 2008 to 2010, variable costs to insurers increased from approximately $1.8 billion to $2.8 billion, a staggering $1 billion dollar increase. *Id.* at 8. According to the Insurance Consumer Advocate, the only cause to which this increase could be attributed is fraud, ultimately paid by consumers as a "fraud tax." *Id.*[2]

Because the legislature enacted HB 119 in response to an overpowering public necessity to lower premiums and reduce fraud, it is arguable that the law would be constitutional even if it completely eliminated injured parties' access to

[2] As early as 2009, insurance fraud was estimated to cost the average Florida family as much as $1,400 per year. *See* Florida Department of Financial Services, Chief Financial Officer, *CFO Sink: Reporting PIP Fraud Pays More than Participating in It*, Press Release (February 6, 2009) (attached as Appendix 3).

courts to seek redress for injuries sustained in motor vehicle accidents. However, HB 119 merely modified the required PIP benefits in order to meet this public necessity.

Additionally, the PIP system, as amended by HB 119, continues to provide a reasonable alternative for claimants to the traditional tort action, and for this reason as well, does not unconstitutionally restrict citizens' access to the courts. Initially, it bears mention that there is no claimant in this action that has standing to raise this argument. This is an action by medical providers who render services to clients that happen to pay for those services with PIP benefits, and there is no "insured" claimant that was denied access to courts for recovery of medical expenses.

Nonetheless, the no-fault law has consistently been upheld as constitutional under an "access to courts" analysis. Each time the law has been reviewed – when initially enacted and following its amendment – the Florida Supreme Court has held that the PIP system provides a reasonable alternative to traditional tort actions. *See Lasky v. State Farm Ins. Co.*, 296 So. 2d 9, 15 (Fla. 1974); *Chapman v. Dillon*, 415 So. 2d 12, 17 (Fla. 1982); *State Farm Mut. Auto. Ins. Co. v. Nichols*, 932 So. 2d 1067, 1077 (Fla. 2006). This line of cases does not require PIP benefits to cover all economic losses to be constitutional. Instead, the PIP system has been held constitutional because it provides for prompt recovery of an injured party's

"major and salient economic losses," without regard to fault. *Chapman*, 415 So. 2d at 17. HB 119 does not change the essential character of the PIP system, and the law continues to provide a reasonable alternative to traditional tort actions.

Finally, HB 119 actually increases Florida citizens' access to the courts in PIP cases. Insureds were previously only permitted to bring an action in court for recovery of medical expenses after they had exhausted $10,000 of PIP coverage. However, HB 119 limits PIP benefits for non-emergency conditions to $2,500, and does not provide PIP benefits for acupuncture or massage therapy. Therefore, insureds are permitted to seek redress in the courts for any expenses for non-emergency services in excess of the $2,500 in PIP coverage, or for expenses incurred for massage therapy or acupuncture. When HB 119 decreased the required PIP coverage, it consequently limited the scope of the tort exemption, providing greater access to courts than was available under the prior version of the law.

ARGUMENT

Although the order on appeal is one granting a temporary injunction and not one deciding the matter on its merits, Appellees were required to demonstrate a substantial likelihood of success on the merits in order to justify an injunction. *See Shands at Lake Shore, Inc. v. Ferrero*, 898 So. 2d 1037, 1039 (1st DCA 2005). Issuance of a temporary injunction is an extraordinary remedy, to be granted

sparingly. *Id.* In determining whether there is a substantial likelihood of success, it should be noted that "one asserting the unconstitutionality of an act has the burden of demonstrating clearly that the act is invalid." *Lasky v. State Farm Ins. Co.*, 296 So. 2d 9, 15 (Fla. 1974), citing *Village of North Palm Beach v. Mason*, 167 So. 2d 721 (Fla. 1964). Therefore, Appellees' burden was to show a substantial likelihood of demonstrating that HB 119 is clearly invalid.

Pursuant to Article I, Section 21 of the Florida Constitution, the legislature may not abolish Florida citizens' right to access the courts without providing a reasonable alternative or demonstrating an overpowering public necessity and that there is no alternative method for meeting the necessity. *Kluger v. White*, 281 So. 2d 1, 4 (Fla. 1973). This District has held that *Kluger* should be narrowly construed, and that "***no substitute remedy need be supplied by legislation which reduces but does not destroy a cause of action***...." *John v. GDG Services, Inc.*, 424 So. 2d 114, 116 (Fla. 1st DCA 1982), quoting *Jetton v. Jacksonville Electrich Auth.*, 399 So. 2d 396, 398 (Fla. 1st DCA 1981)(emphasis added). In upholding the workers compensation law, this Court reviewed *Kluger*, and, quoting *Jettson*, explained that:

> Guided by case law subsequent to *Kluger*, we narrowly construe the instances in which constitutional violations will arise. The Constitution does not require a substitute remedy unless legislative action has abolished or totally eliminated a previously recognized cause of action.

Id, quoting *Jetton*, 399 So. 2d at 398.

In *John*, this Court noted that "the right to recover for industrial injuries has not been so reduced as to be effectively eliminated." *Id.* Accordingly, the Court found the workers compensation law constitutional, without addressing whether it constituted a reasonable alternative to tort actions or was enacted pursuant to an overriding public necessity. Similarly, the no-fault law, as amended by HB 119, does not reduce the right to recover for injuries sustained in motor vehicle accidents to such an extent that the right to recover is effectively eliminated. Therefore, under the reasoning in *John*, the no-fault law is constitutional, and this Court need not examine whether the law provides a reasonable alternative to tort actions or was enacted in response to overpowering public necessity.

In any event, the Florida Supreme Court has consistently upheld the constitutionality of the no-fault law, holding that it provides a reasonable alternative to the traditional tort action. *See Lasky v. State Farm Ins. Co.*, 296 So. 2d 9, 15 (Fla. 1974); *Chapman v. Dillon*, 415 So. 2d 12, 17 (Fla. 1982); *State Farm Mut. Auto. Ins. Co. v. Nichols*, 932 So. 2d 1067, 1077 (Fla. 2006). Moreover, HB 119 was enacted in response to an overpowering public necessity for PIP reform in order to combat fraud and reduce premiums. Even independent of the argument that the law provides a reasonable alternative for claimants, it is constitutional based on the strong public policy behind its enactment.

I. HB 119 was Enacted Based Upon an Overpowering Public Necessity for PIP Reform in Order to Eliminate or Reduce PIP Fraud.

The OIR conducted a data call in 2011, which revealed that, in recent years, many insurers have found it necessary to increase rates in excess of 10 percent per year. *See* Office of Insurance Regulation, *Report on Review of the 2011 Personal Injury Protection Data Call*, p.2 (April 11, 2011)(attached as Appendix 4, and hereinafter cited as "A. 4."). Based on data submitted on August 1, 2011, the average PIP rate increases since January 1, 2009, for the top five insurers in Florida ranged from 35.1 percent to 72.2 percent. A. 2. at 10. The December 2011, Consumer Advocate Report also revealed that paid PIP losses per car, per year increased more than 66 percent over the previous 2.5 years, putting PIP premiums on pace to double every 3 years. *Id.* at 6.

However, while PIP premiums and paid losses have increased at drastic rates, the number of motor vehicle accidents actually decreased during the same period. *Id.* at 7. Perhaps the most telling statistic to demonstrate the severity of PIP losses is the "pure loss ratio," which is calculated by dividing incurred losses by earned premiums. From 2006 to 2010, the PIP pure loss ratio increased 57 percent to 97.4 percent. *Id.* at 20. "This means that for every dollar of premium that the insurer collects; over ninety-seven cents went to pay for losses." *Id.* When expenses for defense and cost containment are added to the pure loss ratio, it becomes 104.1 percent, meaning that for every dollar in premium collected, over

one dollar and four cents is paid out purely in losses and expenses for defense and cost containment. A. 4. at 21. Florida is well above the national average in provider charges per claim and the number of procedures performed per claim. *Id.* at 13.

This drastic increase in premiums and paid losses directly corresponds with an increase in charges for non-emergency services rendered by acupuncturists, massage therapists, and chiropractors. In 2010, the average charges per PIP claimant were lowest for emergency medicine, and highest for chiropractic, acupuncture, and massage therapy. A. 2. at 21. According to the OIR Data Call, the total number of massage therapy procedures performed in connection with PIP claims has increased 251 percent from 2007 to 2010, and the total allowed reimbursement for massages increased 202 percent. A. 4. at 17. In 2010, almost a quarter of all amounts paid for physical medicine and rehabilitation was attributable to massage therapy. *Id.* at 17.

While the median number of chiropractic procedures has remained constant, the amount billed for chiropractic services is increasing at an alarming rate. From 2007 to 2010, the total amount billed for chiropractic services has increased 46 percent and total allowed reimbursement has increased 23 percent, despite the fact that the frequency of procedures has remained constant and the duration of treatments has actually decreased slightly. A. 4. at 19. Data from a 2007 study by

the Insurance Research Council indicates that chiropractors submit the largest percentage of charges for treating PIP claimants than any other medical providers. A. 2. at 20, citing Insurance Research Council, *Florida Auto Injury Insurance Claim Environment 2007 Final Report*, p.14 (February 2007).

PIP fraud has become a serious problem and the evidence supports the link between this fraud and the staggering increase in losses and premiums. The OIR explained that anecdotal evidence from insurers indicates that fraud is contributing significantly to rate increases and stricter underwriting requirements. A. 4. at 32. The Division of Insurance Fraud, a division of the Department of Financial Services, reported that between July 2007 and April 2010, the number of PIP fraud cases reported has increased over 60 percent, from 2669 in July 2007, to 4271 in April 2010. *Id.* at 31. In fiscal year 2010-2011, PIP fraud referrals reached 6,699, ***an increase of over 150 percent since 2007***, making referrals for PIP fraud almost 50 percent of all referrals to the Division of Insurance Fraud. Office of Insurance Regulation, *Cabinet Presentation - Personal Injury Protection* (August 2011)(attached as Appendix 5). The data suggests that the major perpetrators of this fraud include massage therapists, acupuncturists, and chiropractors. Indeed, from 2007 to 2010, arrests for unlicensed practice of massage therapy constituted

59 percent of all arrests for unlicensed activity. A. 4. at 18. Likewise, stories of chiropractors involved in PIP fraud continue to dominate the headlines in Florida.[3]

HB 119 was enacted in response to increasing PIP premiums due to widespread fraud, which threatens the viability of the PIP system. If it is any indication, the word "fraud," or some iteration of it, appears nine times in the title of the bill alone. *See* HB 119, lines 2 - 124. Additionally, HB 119 mandates that insurers institute rate reductions based on the savings that the amendments are projected to create. *See* HB 119, lines 1774- 1821. The amendments contain various fraud fighting tools, and even authorize the Division of Insurance Fraud to establish a direct-support program called the "Automobile Insurance Fraud Strike Force" for the sole purpose of prosecuting, investigating, and preventing motor vehicle insurance fraud. *See* HB 119, lines 478 - 613; section 626.9895, *Fla. Stat.* There have been countless studies and reports, including those cited above, highlighting the prevalence of fraud in the PIP system and the need for reform.

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[3] Orlando Sentinel, *Windmere chiropractor convicted in fraud case* (March 1, 2013)(available at http://articles.orlandosentinel.com/2013-03-01/news/os-windermere-chiropractor-guilty-fraud-20130301_1_fraud-case-health-care-fraud-chiropractor); NBC News, *Fort Myers chiropractor arrested for fraud* (May 15, 2013) (available at http://www.nbc-2.com/story/22262666/fort-myers-chiropractor-arrested-for-fraud#.UZ5oloL6xhE); Sun Sentinel, *South Florida Insurance Fraud: Feds charge 92 Over $20 Million in Claims* (May 17, 2013) ("The scheme dated from about October 2006 to December 2012 and the defendants staged accidents and submitted false insurance claims through 21 chiropractic clinics in Palm Beach and Miami-Dade counties that they controlled, authorities said.")(available at http://www.huffingtonpost.com/2013/05/17/south-florida-insurance-fraud_n_3289964.html); Claims Journal, *33 More Charged in Florida Staged Auto Accident Probe* (May 20, 2013)("those charged included doctors, chiropractic clinic owners and therapists in Palm Beach and Miami-Dade counties.")(available at http://www.claimsjournal.com/news/southeast/2013/05/20/229256.htm); South County Times, *Crestwood Chiropractor Gets 6 Years for health Care Fraud* (April 26, 2013)(available at http://www.southcountytimes.com/Articles-In-Crestwood-i-2013-04-26-186278.114137-Crestwood-Chiropractor-Gets-6-Years-For-Health-Care-Fraud.html).

This is precisely the type of overpowering public policy that would warrant the abolition of an existing common law claim. However, as described above, no previously existing cause of action was abolished by HB 119, and the right to recover benefits for injuries sustained in motor vehicle accidents was not eliminated. While it is true that the PIP system at large constitutes a ***limitation*** on citizens' rights to access the courts, it has repeatedly been held constitutional, and HB 119 does not change the essential structure of the PIP system, but only limits certain benefits in response to a well documented and grave public necessity.

Additionally, there is no apparent alternative means for meeting this public necessity. HB 119 limits the availability of PIP benefits in an effort to ensure that fraud is reduced, premiums are decreased, and PIP remains a viable system for allowing injured parties to recoup their major and salient economic losses from their insurer without regard to fault, and without the cost, delay and uncertainty involved in litigation. As the statistics above indicate, if left untouched, the PIP system will become completely unsustainable, as insurers are already paying more in losses and defense and containment costs than they are receiving in premium, causing insureds to pay substantially greater premiums each year. However, a complete abolition of the PIP system would return claimants to a system that courts have described as slow, inefficient and congested, all without any guarantee of recovery. *See Lasky*, 296 So. 2d at 16. The trial court trivialized HB 119 as

reflecting one of the ways in which the legislature has "tinkered with" the law and underlying principles. A. 1. at 3. However, as explained below, HB 119 is a reasonable response to practical problems with the no-fault law, which continues to provide a reasonable alternative to tort actions.

II. The No-Fault System Continues to Provide a Reasonable Alternative for Claimants.

Because of pervasive fraud in the PIP system, the legislature has been forced to amend the no-fault law several times since its initial enactment in 1972. The Florida Supreme Court was first faced with deciding the constitutionality of the no-fault law in *Lasky v. State Farm Ins. Co.*, 296 So. 2d 9 (Fla. 1974). In *Lasky*, the Supreme Court upheld the constitutionality of the no-fault law, holding that the PIP system provides a reasonable alternative to traditional tort actions because it provides for recovery of an injured party's "major and salient economic losses" from his own insurer, without regard to fault. *Id.* at 13-14. The *Lasky* court explained that the purposes of the no-fault law are to assure that injured persons may recover from their own insurers without regard to fault, thus avoiding dire financial circumstances with the "possibility of swelling the public relief rolls;" limit the number of lawsuits and reduce court congestion and calendar delays; lower auto insurance premiums; and end the inequities of recovery in the traditional tort system. *Id.* at 16.

After *Lasky*, the no-fault law was amended several times and, among other things, those amendments raised the permissible PIP deductibles and reduced the required benefits for medical expenses. In *Chapman v. Dillion*, 415 So. 2d 12 (Fla. 1982), the Florida Supreme Court was again faced with a challenge to the constitutionality of the no-fault law. In *Chapman*, the Supreme Court recognized that "the crux of the holding in *Lasky* was that all owners of motor vehicles were required to purchase insurance that would assure injured parties recovery of their major and salient economic losses." *Id.* at 17. The *Chapman* court explained – or "rationalized away," according to the trial court (A. 1. at 6) – that "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*." *Id.* (emphasis added). The *Chapman* court also noted that lowering benefits and increasing deductibles would not necessarily lead to reduced compensation and increased litigation, as many motorists have other insurance or benefit programs that would aid in paying for their medical expenses. *Id.*

In *State Farm Mut. Auto. Ins. Co. v. Nichols*, 932 So. 2d 1067 (Fla. 2006), after additional amendments to the no-fault law, the Florida Supreme Court upheld its constitutionality. Reaffirming its rationale in *Chapman*, the court explained that "full recovery was not essential to the outcome in *Lasky*" and held that the offer of judgment statute could be applied in PIP cases to allow insurers to recover

attorney's fees, and that this did not "fundamentally change the essential characteristics of the PIP system and thereby deny access to courts." *Id.* at 1077. This stands in marked contrast to the trial court's characterization of the no-fault law, as amended, as an "experiment in socialism." A. 1. at 3.

When analyzed under the standard set forth in *Kluger*, and in accordance with the line of cases discussed above, HB 119 does not unconstitutionally restrict access to courts. At issue here are the sections of HB 119 limiting PIP benefits for non-emergency services to $2,500, requiring claimants to seek treatment within fourteen days, and excluding from PIP coverage expenses for treatment by massage therapists and acupuncturists. Despite these amendments, the no-fault law continues to provide for prompt recovery of an injured party's major and salient economic losses. The essential characteristics of the PIP system remain unchanged. PIP benefits for treatment of emergency medical conditions remain available up to $10,000 and benefits for non-emergency conditions also remain available up to $2,500, so long as the claimant seeks treatment within fourteen days. Although PIP benefits are not available for massage therapy and acupuncture, as explained above, these types of treatment have been at the very center of PIP fraud. Like in *Chapman*, the amendments at issue are "reasonable attempts by the legislature to correct some of the practical problems which the no-fault law had imposed...." *Chapman*, 415 So. 2d at 16.

Additionally, the fact that PIP benefits have been limited by HB 119 does not mean that expenses for such treatment are not available from other sources. In fact, with the enactment of the Affordable Care Act, Floridians will be required to obtain health insurance by January 14, 2014, or face fines. *See* 26 USC §5000A. According to an article published by the Tampa Bay Business Journal, Florida stands to receive $8.5 million in federal grants to employ hundreds of "navigators" over the next several months in order to help uninsured Floridians enroll in health insurance. Tampa Bay Business Journal, *Feds to help uninsured Floridians sign up for health insurance* (May 12, 2013).[4] Therefore, the likelihood that injured parties will be able to recover medical expenses from alternate sources is greater today than it was when the Supreme Court decided *Chapman*.

Finally, perhaps the most puzzling aspect of Appellees' argument that HB 119 unconstitutionally restricts citizens' access to courts, and the trial court's order, is the fact that the amendments actually lower the threshold for bringing a civil action for bodily injury in many cases, thereby increasing citizens' access to courts for injuries arising out of the ownership, operation, maintenance or use of a motor vehicle.

The no-fault law exempts any person from tort liability for bodily injury resulting from the ownership, operation, maintenance, or use of a motor vehicle to

[4] Available at http://www.bizjournals.com/tampabay/blog/morning-edition/2013/05/feds-to-help-uninsured-floridians-sign.html.

the extent that PIP benefits are available for the injury. Specifically, section 627.727(1), *Fla. Stat.* provides as follows:

> Every owner, registrant, operator, or occupant of a motor vehicle with respect to which security has been provided as required by ss. 627.730-627.7405, and every person or organization legally responsible for her or his acts or omissions, is ***hereby exempted from tort liability*** for damages because of bodily injury, sickness, or disease arising out of the ownership, operation, maintenance, or use of such motor vehicle in this state ***to the extent that the benefits described in s. 627.736(1) are payable for such injury,*** or would be payable but for any exclusion authorized by ss. 627.730-627.7405, under any insurance policy or other method of security complying with the requirements of s. 627.733, or by an owner personally liable under s. 627.733 for the payment of such benefits, unless a person is entitled to maintain an action for pain, suffering, mental anguish, and inconvenience for such injury under the provisions of subsection (2) [Section 627.727(1), *Fla. Stat.*(emphasis added)].

Pursuant to this section, exemption from tort liability is only provided "to the extent that the benefits described in s. 627.736(1) are payable for such injury[.]" *Id.* Section 627.736(1), *Fla. Stat.* sets forth the minimum required coverage. Prior to HB 119's passage, this section provided for up to $10,000 in PIP coverage, and consequently, provided tort exemption for up to $10,000 in damages because of bodily injury. As amended, this section provides only $2,500 in PIP benefits for "non-emergency" services, and consequently, only exempts tort liability for damages up to $2,500 in non-emergency cases. Additionally, because PIP benefits are not available for massage therapy or acupuncture, the tort exemption does not apply to damages for such treatment either. Thus, Appellees'

argument is counter-intuitive. Rather than limiting access to the courts, HB 119 has actually decreased the scope of the tort exemption, thereby increasing citizens' access to the courts.

CONCLUSION

The trial court's order should be reversed, as Appellees have not demonstrated – and cannot demonstrate – a substantial likelihood of success on the merits of their claim. HB 119 does not change the essential characteristics of the no-fault law, which has been consistently upheld by the Florida Supreme Court when subjected to constitutional scrutiny. Additionally, as described in detail in Appellant's initial brief, fatal procedural and technical defects exist in the trial court's order that warrant reversal. Therefore, *Amici* respectfully request that his Court reverse the trial court's order granting a temporary injunction.

Respectfully Submitted,

Maria Elena Abate
Matthew C. Scarfone
Colodny, Fass, Talenfeld, Karlinsky, Abate & Webb, PA
One Financial Plaza, 23rd Floor
100 SE Third Avenue
Fort Lauderdale, Florida 33394
mabate@cftlaw.com
mscarfone@cftlaw.com

CERTIFICATE OF SERVICE

WE HEREBY CERTIFY that a true and correct copy of the foregoing was served by electronic mail this day 30th of May 2013, to the persons on the attached Service List.

COLODNY, FASS, TALENFELD,
KARLINSKY, ABATE & WEBB P.A.
Attorneys for *Amici Curiae* Property
Casualty Insurers Association of
America, Florida Insurance Council,
and American Insurance Association
One Financial Plaza, 23rd Floor
100 Southeast Third Avenue
Fort Lauderdale, Florida 33394
Telephone: (954) 492-4010
Facsimile: (954) 492-1144
Email: mabate@cftlaw.com
mscarfone@cftlaw.com

By: _____
MARIA ELENA ABATE
Fla. Bar No. 770418
MATTHEW C. SCARFONE
Fla. Bar No. 94306

SERVICE LIST

Luke Charles Lirot
2240 Belleair Road, Suite 190
Clearwater, Florida 33764
Luke2@lirotloaw.com
jimmy@lirotlaw.com

Adam S. Levine
11180 Gulf Boulevard, Suite 303
Clearwater, Florida 33767
aslevine@msn.com
alevine@law.stetson.edu

Katherine E. Giddings
Nancy M. Wallace
Marcy L. Aldrich
Akerman Senterfitt
106 E. College Street, #1200
Tallahassee, Florida 32301
katherine.giddings@akerman.com
nancy.wallace@akerman.com
elisa.miller@akerman.com
martha.parramore@akerman.com
marcy.aldrich@akerman.com
debra.atkinson@akerman.com

C. Timothy Gray
J. Bruce Culpepper
Office of Insurance Regulation
Larson Building, Room 647-B
200 E. Gaines Street
Tallahassee, Florida 32399

Jessie L. Harrell
Bryan S. Gowdy
865 May Street
Jacksonville, Florida 32204
jharrell@appellate-firm.com
bgowdy@appellate-firm.com
filings@appellate-firm.com

Timothy Osterhaus
Allen Winsor
Rachel Nordby
Office of the Attorney General
The Capitol, PL-01
Tallahassee, Florida 32399-1050

Theodore E. Karatinos
Holliday, Bomhoff & Karatinos, PL
18920 North Dale Mabry Highway,
Suite 101
Lutz, Florida 33548
tedkaratinos@hbklawfirm.com

CERTIFICATE OF COMPLIANCE

WE HEREBY CERTIFY that this brief complies with the font standards in Rule 9.210, Florida Rules of Appellate Procedure. This Brief utilizes Times New Roman 14 point font.

By: _____

MARIA ELENA ABATE
Fla. Bar No. 770418
MATTHEW C. SCARFONE
Fla. Bar No. 94306