The Florida Justice Reform Institute Opposes HB 1437

For decades, Florida has been a no-fault auto insurance state in which medical expenses and other amounts incurred by an individual injured in a car accident are paid by the individual's own insurance company, regardless of who was at fault for the accident. *See* § 627.736, Fla. Stat. Under this system, drivers are required to maintain $10,000 in personal injury protection ("PIP") coverage on their auto insurance policies. *See* §§ 324.011, 324.021(7), 324.022(1), Fla. Stat. In addition, the injured person's ability to sue the parties at fault for the car accident for noneconomic damages, such as pain and suffering, is curtailed unless certain thresholds are met. *See* § 627.737, Fla. Stat. Now the Legislature is considering HB 1437. HB 1437 creates a new attorney fee mechanism for PIP.

In 2021, the Florida Legislature passed a bill that would have repealed PIP. Governor DeSantis, however, vetoed the bill, leaving the current no-fault/PIP system intact. In his veto letter, Governor DeSantis stated that, although the "PIP system has flaws and Florida law regarding bad faith is deficient," the legislation did "not adequately address the current issues facing Florida drivers and may have unintended consequences that would negatively impact both the market and consumers." Veto Ltr. for CS/CS/CS SB 54, June 29, 2021. While it remains that the PIP system has its flaws, repealing the PIP law should be resisted until we can analyze the results of recently adopted statutory and judicial reforms that are likely to address the problems associated with the PIP system.

Since it was enacted, Florida's PIP law has been plagued by fraud and excessive litigation over low-dollar-value claims. Often these lawsuits were filed for the simple reason that, under Florida law, successful plaintiffs in insurance lawsuits (including disputes over PIP claims) were entitled to an award of attorneys' fees under section 627.428, Florida Statutes (the "One-Way Attorney Fees Statute")—no matter how small the claim—but successful insurers in such disputes could not recover their fees.

That changed in 2023 when Governor DeSantis signed HB 837 and repealed the One-Way Attorney Fees Statute. This eliminated the incentive to litigate low-dollar claims in the hopes of recovering outsized attorneys' fees. HB 837 took effect in March 2023, and the impacts of the reforms that were passed in that legislation are still being realized. In addition, recent judicial decisions have brought more certainty to how PIP insurers can apply statutory limitations on the calculation of reasonable charges that are reimbursable under PIP policies.

Before passing HB 1437, we should allow the reforms of HB 837 and recent Florida case law sufficient time to work and to hopefully appreciably decrease frivolous PIP litigation and excessive PIP benefit payments. Then, after data on PIP litigation and claim costs has been

collected for five years or more following the enactment of HB 837, Florida stakeholders will be in a much better position to decide whether the passage of HB 1437 is necessary or advisable. Consequently, the Institute opposes HB 1437.

History of Florida's No-Fault/PIP Auto Insurance Law

Under the traditional "fault" or "tort" system of auto insurance, each insurance company pays for the medical bills and other damages resulting from a car accident according to the percentage of fault of its policyholder, and the injured person has the right to sue any party who was liable for the accident. *See* Staff of Fla. Senate Comm. on Rules, CS/CS/SB 54 (2021) Motor Vehicle Ins., at 5 (Mar. 9, 2021) [hereinafter "2021 Senate Staff Analysis of CS/CS/SB 54"].[1]

In 1971, Massachusetts became the first state to pass legislation creating no-fault automobile insurance. Woody R. Clermont, *The Advent of Paper IMEs in No-Fault Claims: Will They Be a Solution or a Problem?*, Fla. Bar J. (Sept./Oct. 2011). Later that same year, Florida followed suit, determining that the state's current system of auto insurance was costly, inefficient in paying claims, and resulted in excessive car accident lawsuits. *See Lasky v. State Farm Ins. Co.*, 296 So. 2d 9, 16 (Fla. 1974). In an effort to reduce insurance costs, increase efficiency in claim payments, and reduce litigation, the Legislature enacted a no-fault PIP auto insurance law. *See id.* Under a no-fault system, insurers and policyholders assume a trade-off. *See* Fla. House Ins. Comm., Rev. of Fla.'s No-Fault Auto. Ins. Law, at 8 (Feb. 2006).[2] Under a no-fault PIP auto insurance law, all drivers are required to purchase PIP auto insurance policies, and the insurer under such policies is required to quickly pay the medical bills, disability (lost wages), and death benefits of its own policyholder, regardless of whether the policyholder was at fault for the accident. *Id.* However, in exchange for this benefit, the policyholder's ability to sue the person at fault for the car accident for economic and noneconomic damages, and thus receive compensation from that person's insurance company, is curtailed. *See id.*

In 1974, the constitutionality of the PIP law was tested in *Lasky v. State Farm Florida Insurance Co.*, 296 So. 2d 9, but the trade-off represented by the law largely saved it. In that case, Lasky sustained personal injuries while driving her husband's car. Lasky's damages did not include any injury which would bring her within the provisions of the PIP law allowing her to recover damages for pain and suffering—damages she would have been entitled to in a traditional tort action. *Id.* at 12. Lasky challenged the constitutionality of the PIP law, arguing that the provision barring recovery of pain and suffering damages in these circumstances violated her right to access the courts, due process, and equal protection, among other rights. The Court disagreed, holding that the law was constitutional and did not deprive Lasky of all rights, reasoning that "[i]n exchange for the loss of a former right to recover—upon proving the other party to be at fault—for pain and suffering, etc., in cases where the thresholds of the statute are not met, the injured party is assured a speedy payment of his medical bills and compensation for lost income from his own insurer, even where the injured party was himself clearly at fault." *Id.* at 15.

[1] Available at https://www.flsenate.gov/Session/Bill/2021/54/Analyses/2021s00054.rc.PDF.
[2] Available at https://www.myfloridahouse.gov/Sections/Documents/loaddoc.aspx?PublicationType=Committees&CommitteeId=2246&Session=2006&DocumentType=Reports&FileName=Review+of+FL+auto+ins+law.pdf.

Since 1971, the Florida Legislature has revised and amended the no-fault PIP law over 50 times in an effort to shape the law into a regime that produces the results the Legislature intended of reducing car insurance costs and car accident litigation. *Id.* at 9. Thus, the objective of many of these amendments was to reduce fraudulent and inflated claims made to PIP insurers and to reduce the number of lawsuits arising from car accidents. *See* Rev. of Fla.'s No-Fault Auto. Ins. Law, at 9–14. No-fault auto insurance is particularly susceptible to fraud because it removes the need to prove fault in an accident and requires speedy payment of claims, making it easier for claimants to exaggerate or fabricate injuries and related medical costs to claim larger payouts from their own insurance company.

As an overview of the amendments to Florida's PIP law, in 1976, the law was amended to replace a dollar threshold for lawsuits seeking noneconomic damages arising from car accident injuries with the "verbal threshold." Rev. of Fla.'s No-Fault Auto. Ins. Law, at 9. The PIP law was also amended to add anti-fraud provisions making fraud in auto insurance claims a third-degree felony. *Id*. In 1978, the Legislature expanded PIP coverage to commercial vehicles, increased the PIP maximum benefit to $10,000, and narrowed the verbal thresholds for instituting legal action. *Id*. Thus, beginning in 1978, the only bases for tort suits for noneconomic damages resulting from a car accident injury were specified as permanent injury, permanent loss of an important bodily function, permanent and significant disfigurement, or death. *Id.* at 9–10.

In 1988, the Legislature passed substantial amendments to the PIP law through legislation entitled the "Motor Vehicle Insurance Reform Act." *Id.* at 10. The most notable changes to the law enhanced the enforcement of the financial responsibility laws in an attempt to ensure that all registered drivers purchased the minimum required insurance coverage. *Id.* The legislation also increased the minimum property damage coverage from $5,000 to $10,000. *Id.*

Despite the foregoing amendments to the PIP law, litigation arising from car accidents and fraudulent PIP claims—including vehicle accidents that were faked or intentionally caused, charges for medical services that were never provided, and inflated costs for medical services—continued to grow. *Id.*; *see also* Staff of Fla. House Comm. on Ins., PCB IN 03-01a Motor Vehicle Ins., at 3 (Mar. 19, 2003) [hereinafter "2003 House Staff Analysis"].[3] As a result, insurance premiums and other costs increased. *See id.* Indeed, in 2000, a Statewide Grand Jury found "rampant fraud" in the PIP system, Fla. House Ins. and Banking Subcomm., CS/CS/HB 119 (CS/CS/SB 1860) Final Bill Analysis, at 2 (May 7, 2012) [hereinafter "2012 House Final Bill Analysis of CS/CS/HB 119"],[4] and concluded that the $10,000 no-fault coverage was a "personal slush fund" for certain unscrupulous health care providers and lawyers, *see* 2003 House Staff Analysis at 3. The Grand Jury discovered that fraud in PIP claims often started with unethical lawyers reviewing motor vehicle crash reports to find people who were recently involved in a car accident and solicit representation of those people. *See id.* The lawyers would then refer the accident victims to health care providers with whom the lawyers colluded, and those providers would charge inflated fees for services, charge for services never rendered, and order unnecessary tests. *Id.* The lawyers would then file lawsuits against insurers who did not pay for these fabricated and inflated services within the 30-day time period for paying PIP claims, knowing that if any part

[3] Available at https://www.myfloridahouse.gov/Sections/Documents/loaddoc.aspx?PublicationType=Committees&CommitteeId=2125&Session=2003&DocumentType=Meeting+Packets&FileName=1513.pdf.
[4] Available at https://flsenate.gov/Session/Bill/2012/119/Analyses/h0119z1.INBS.PDF.

of the claim was found valid, the lawyer could likely recover his attorneys' fees under the One-Way Attorney Fees Statute.

In 2001, the Legislature enacted many of the reforms to the PIP law recommended by the Grand Jury, including requiring certain health care clinics to register with the Department of Health and providing criteria for medical directors in order for services received from those clinics to be reimbursable under PIP policies; applying fee schedules for reimbursement of certain medical procedures; and limiting access to motor vehicle crash reports to curtail lawyers from illegally soliciting accident victims. *See* 2012 House Final Bill Analysis of CS/CS/HB 119 at 2. Additional changes were enacted in 2003, including strengthening health care clinic regulation; requiring clinic licensure with the Agency for Health Care Administration; requiring all PIP claimants to send a pre-suit demand letter to insurers for unpaid benefits as a condition to filing a lawsuit; specifying criteria as to "reasonable" charges for services; strengthening various criminal penalties for PIP fraud; and providing for the repeal of the PIP law in 2007, unless reenacted by the Legislature during the 2006 Regular Session. *Id.* at 3. In 2006, the PIP law sunset after a bill to extend the sunset date was vetoed by Governor Jeb Bush, but was reenacted in 2007 with a few additional amendments. *See id.*

Again, despite these reforms, the number and severity of PIP claims and PIP claim-related lawsuits continued to increase even though the number of car accidents in Florida decreased. *See id.* at 6. Consequently, in 2011, the Florida Office of Insurance Regulation ("OIR") conducted a review of PIP claim data and published a report based on its findings. *Id.* The report concluded that, since 2006, PIP claims had increased by 28%, PIP benefits paid by insurers had increased by 70%, and PIP claim-related lawsuits against insurers had increased by 387%. *See id.* Lawyers continued to be incentivized to file lawsuits against PIP insurers even if the claimed amount was low because of the One-Way Attorney Fees Statute, and case law interpreting the statute permitted attorneys' fees far exceeding the insured's claim to be recovered from insurers. *See id.* at 7–8. In response to OIR's report, the Legislature made substantial amendments to the PIP law in an effort to reduce fraud and litigation related to PIP claims. *See id.* at 9–12. Those reforms included:

- Excluding massage and acupuncture from covered medical benefits;
- Requiring health care clinics that seek PIP reimbursement to be licensed, with specified exceptions;
- Authorizing a direct-support organization to combat motor vehicle insurance fraud;
- Amending the PIP schedule of maximum charges for certain medical services;
- Tolling the PIP payment period when fraud is reasonably suspected;
- Requiring insureds to comply with all policy terms, including requests for examination under oath;
- Creating a rebuttable presumption that the failure to appear for two mental or physical examinations constitutes an "unreasonable refusal" to submit to examination;
- Prohibiting the use of contingency risk multipliers and providing guidelines for judges to consider in determining whether the amount of an attorney fee award is appropriate when calculating fees awarded to insureds or their assignees in PIP claim-related lawsuits;

- Making the provisions of the offer of judgment and demand for judgment statute (§ 768.79, F.S.) are made applicable to no-fault disputes;
- Revoking the license of health care practitioners found guilty of insurance fraud for five years;
- Further amending crash report forms; and
- Specifying certain actions that constitute fraud.

Id. at 1, 12.

Florida's Current No-Fault/PIP Auto Insurance Law

Florida's PIP law has remained largely unchanged since the substantial amendments passed in 2012. Each of those reforms aimed at reducing fraud and litigation costs in connection with PIP claims remains in the current version of the statute. In addition to those provisions, the current PIP law contains the provisions outlined below.

Under Florida's financial responsibility law, drivers are required to purchase both PIP and property damage liability insurance. *See* §§ 324.011, 324.021(7), 324.022(1), Fla. Stat. The minimum amounts of liability coverages required are $10,000 in the event of bodily injury to, or death of, one person in a car accident, $20,000 in the event of injury to, or death of, two or more people in a car accident, and $10,000 in the event of damage to property of others in a car accident, or, in the alternative, combined property damage liability and bodily injury liability coverage in the amount of $30,000. *See* §§ 324.021(1), 324.022(1), Fla. Stat. Florida's PIP law requires an auto insurance policy to cover the named insured, relatives residing in the same household of the insured, persons operating the insured's motor vehicle, and passengers in the motor vehicle for bodily injury benefits (i.e., medical bills) or disability benefits (i.e., lost wages) benefits up to $10,000 and death benefits up to $5,000. § 627.736(1), Fla. Stat. For bodily injury sustained in a car accident, PIP coverage provides reimbursement for 80% of the injured person's reasonable medical expenses, 60% percent of his or her loss of income, and 100% of expenses reasonably incurred in obtaining from others ordinary and necessary services that the injured person would normally perform for his or her household (such as childcare and law maintenance). *Id.*

To receive medical benefits under a PIP policy, the covered individual must receive initial medical services and care within 14 days after the car accident. § 627.736(1)(a), Fla. Stat. In addition, the initial medical services and care are only reimbursable if lawfully provided, supervised, ordered or prescribed by a licensed physician, licensed osteopathic physician, licensed chiropractic physician, licensed dentist, or if rendered in a hospital or in a facility that owns or is owned by a hospital, or if provided by a licensed emergency transportation and treatment provider. *Id.* Follow-up services and care are only reimbursable if they result from a referral from the providers during the initial medical services and care and must be consistent with the underlying medical diagnosis rendered when the individual received initial services and care. *Id.*

The person injured in a car accident is paid the foregoing benefits for bodily injury from the insurance company covering the person regardless of his or her fault for the accident. *See* 2021 Senate Staff Analysis of CS/CS/SB 54 at 5. The statute requires the insurance company to pay PIP insurance benefits within 30 days after the insurer is furnished with written notice of a covered

loss. § 627.736(4)(b), Fla. Stat. However, if the insurer has a "reasonable belief" that a fraudulent act has been committed in connection with the PIP claim, the insurer has an additional 60 days to conduct its fraud investigation before payment of the claim becomes due. § 627.736(4)(i), Fla. Stat.

The injured person may not bring a lawsuit against the parties at fault for the car accident to recover noneconomic damages (i.e., pain, suffering, mental anguish, and inconvenience) arising out of the accident—and the injured person and other covered persons are immune from lawsuits by other injured persons for such noneconomic damages arising out of the accident—unless the injured person suffers at least one of the following injuries (i.e., the "verbal thresholds"):

- a significant and permanent loss of an important bodily function;
- a permanent injury within a reasonable degree of medical probability, other than scarring or disfigurement;
- a significant and permanent scarring or disfigurement; or
- death.

§ 627.737, Fla. Stat.; *see also* Rev. of Fla.'s No-Fault Auto. Ins. Law at 16.

Until Recent Statutory and Case Law Changes, Reforms to the PIP Law Aimed at Reducing PIP Related Litigation and Excessive PIP Benefit Payments Have Been Thwarted.

As discussed below, despite the Legislature's efforts in prior years to reduce litigation costs for PIP claim-related lawsuits and the payment of excessive PIP benefits, until recently, those efforts have been thwarted by the One-Way Attorney Fees Statute and case law that created uncertainty in how reasonable charges may be calculated under the PIP statute.

1. Prior to Its Repeal, the One-Way Attorney Fees Statute Thwarted Legislative Efforts to Reduce Frivolous PIP-Related Lawsuits.

Litigation arising from car accidents was supposed to be significantly reduced under the no-fault PIP system because the PIP statute restricts an accident victim's ability to sue the person at fault for the accident. *See* § 627.737, Fla. Stat. But, as the thorny history of the PIP law summarized above indicates, that objective has not been realized over the years. One of the primary reasons car accident litigation was not reduced by the PIP law was the One-Way Attorney Fees Statute, section 627.428, Florida Statutes.[5] Until the One-Way Attorney Fees Statute was fully repealed in 2023, the statute permitted prevailing insureds and their assigns (such as the medical providers seeking reimbursement from PIP insurers) to recover their attorneys' fees in lawsuits against PIP insurers, but did not permit prevailing insurers to recover their attorneys' fees. Thus, lawsuits against PIP insurers were essentially risk-free for insureds and their assigns, regardless of how small the claim. This incentivized insureds and their assigns—and the plaintiffs' attorneys representing them—to bring lawsuits against PIP insurers, even over low-dollar disputes, resulting in a perpetration of low severity damage claims driving disproportionately high recovery of plaintiffs' attorneys' fees.

[5] A similar statute also existed for surplus lines insurers. *See* § 626.9374, Fla. Stat. (2022).

Indeed, below are just a few of the many examples from cases filed before 2023, which illustrate that litigation over relatively low-dollar PIP claims often snowballed into expensive attorneys' fees driven by the One-Way Attorney Fees Statute. *See Baker Fam. Chiropractic, LLC v. Liberty Mut. Ins. Co*., 356 So. 3d 281, 284 (Fla. 5th DCA 2023) ("It is clear that insureds or assignees of insureds are willing to engage insurers in litigation over small amounts of money because of the statutes providing for payment of attorney's fees if they prevail. Those fee awards are often substantial and frequently disproportionate to the underlying amount in controversy." (citation omitted)). The de minimis amounts sought in these cases demonstrate that the real motivation for the lawsuits was the recovery of attorneys' fees:

- In *United Automobile Insurance Co. v. Gibson, M.D., P.A*., 355 So. 3d 955 (Fla. 4th DCA 2023), a PIP insurer filed a confession of judgment in the amount of ***$21.31 in benefits and $7.00 in interest*** and conceded the assignee medical provider's entitlement to attorneys' fees under section 627.428. The trial court granted the provider's motion for fees in the amount of $***10,328.80,*** with interest. Although the appellate court reversed and remanded because part of the attorneys' fee award was founded upon pre-litigation conduct, the court did not disturb the finding that the provider was entitled to its attorneys' fees no matter the low value of the claim.

- In *United Automobile Insurance Co. v. 5-Star Rehabilitation Center, Inc.*, No. 2018-000229-AP-01, 2020 WL 6304285 (Fla. 11th Cir. Ct. Oct. 27, 2020), the circuit court acting in its appellate capacity approved a trial court award of ***$19,357.49*** in attorneys' fees premised only on a claim that the PIP insurer had failed to pay a statutory penalty of ***$250***.

- In *Baker Family Chiropractic, LLC v. Liberty Mutual Insurance Co.*, 356 So. 3d 281 (Fla. 5th DCA Feb. 6, 2023), the litigation concerned the net difference between the interest calculated and paid by the PIP insurer and the amount claimed by the healthcare provider—a difference of only ***$1.48***. Yet the appellate court remanded the case so the trial court could determine whether an award of attorneys' fees under section 627.428 was appropriate.

- In *State Farm Fire & Casualty Co. v. Palma*, 555 So. 2d 836 (Fla. 1990), the Florida Supreme Court approved an attorneys' fee award of ***$253,500*** in a case where the amount of damages in controversy was merely a ***$600*** medical bill.

In 2023, the longstanding One-Way Attorney Fees Statute was repealed, finally ending abuses in PIP claim-related litigation and other insurance litigation by unscrupulous plaintiffs' attorneys. This important change in law means that insureds or their assigns—and overreaching plaintiffs' attorneys—are no longer incentivized by the recovery of large, disproportionate attorneys' fee awards to bring lawsuits over small-dollar PIP claims. Accordingly, this reform is expected to significantly reduce the number of PIP-related lawsuits and the costs incurred by PIP insurers in defending such lawsuits.

2. Florida Courts Only Recently Settled Limitations in the PIP Statute on the Calculation of Reasonable Charges for Healthcare Services Reimbursable by a PIP Insurer.

As mentioned above, to combat the practice of unethical healthcare providers seeking reimbursement from PIP insurers for services provided to insureds at substantially inflated rates, the amendments to the PIP law provided that a PIP insurer may (i) use Medicare coding policies and CMS payment methodologies, including applicable modifiers, to determine the appropriate amount of reimbursement for medical services, supplies, or care; (ii) apply factors for determining a "reasonable charge" amount, such as the usual and customary charges and payments accepted by the provider, reimbursement levels in the community, and various federal and state medical fee schedules applicable to motor vehicle and other insurance coverages; and (iii) limit payment of medical charges to 80% of a specified schedule of maximum charges. *See* § 627.736(5)(a), Fla. Stat. Unfortunately, following the enactment of these limitations on the amounts PIP insurers are required to reimburse healthcare providers, Florida courts interpreted the provisions' application differently. *See, e.g.*, *Allstate Fire & Casualty Ins. v. Stand–Up MRI of Tallahassee, P.A.*, 188 So. 3d 1, 3 (Fla. 1st DCA 2015) (finding the PIP policy language "g[ave] sufficient notice of [the insurer's] election to limit reimbursements by use of the [statutory] fee schedules"); *Orthopedic Specialists v. Allstate Ins. Co*., 177 So. 3d 19, 21, 26 (Fla. 4th DCA 2015) (finding identical language in the PIP policy did not give sufficient notice of the insurer's election to limit reimbursement by use of the statutory fee schedules). As a result, for years after the calculation of charges provisions were enacted, there was uncertainty in how the limitations could be used by PIP insurers, spawning litigation over the provisions. *See id.*

Although it has taken a long time for the jurisprudence to develop, in recent years, the interpretation of these provisions has become fairly well-settled by the courts. Of particular note, in 2021, the Florida Supreme Court held that the PIP statute permits insurers to use the statutory factors for determining a "reasonable charge" amount, such as the usual and customary charges and payments accepted by the provider and reimbursement levels in the community, while also limiting its payment in accordance with the statutory maximums. *See MRI Associates of Tampa, Inc. v. State Farm Mut. Auto. Ins. Co.*, 334 So. 3d 577, 585 (Fla. 2021). In addition, since 2021, courts have sorted out how the schedule of maximum charges applies to each CPT code charged by medical providers. Since there is a limited array of CPT codes used by chiropractors, diagnostic facilities, and orthopedic centers, over the past three years, the number of disputes over reimbursement for those services has greatly reduced.

Accordingly, while the limitations on the calculation of reimbursable charges for healthcare services have been part of the PIP statute for over a decade, the beneficial consequences of those provisions have only recently begun to be realized now that the courts have largely settled the interpretations of those provisions. Now that many of the issues regarding the proper calculation of "reasonable charges" have been resolved, PIP insurers have more certainty in their ability to limit reimbursable charges to reasonable amounts, and there are far fewer lawsuits challenging the amounts of reasonable charges reimbursed by PIP insurers.

Passage of HB 1437 Now Is Unwise until Data on the Impacts of HB 837 Is Available and the Potential Impacts of Repealing PIP Can Be Carefully Considered and Studied

The full impacts of 2023 HB 837—including the elimination of the One-Way Attorney Fees Statute—are not able to be determined at this time, particularly in PIP cases. For this reason

alone, until there is data on the impacts arising from elimination of the One-Way Attorney Fees Statute, passage of HB 1437 is unwise.

HB 837 and the repeal of the One-Way Attorney Fees Statute took effect on March 27, 2023. Thus, the reforms brought on by the legislation have been in effect for less than two years. Notably, the statute of limitations on PIP claims is five years, as it is an action based on a breach of contract, and the limitations period commences upon the date of the breach—i.e., the date the insurer purportedly refused to pay benefits that were due. *See State Farm Mut. Auto. Ins. v. Lee*, 678 So. 2d 818, 820 (Fla. 1996). That means PIP claims that arose due to an insurer's failure to pay on March 27, 2023—HB 837's effective date—may not be the subject of a lawsuit until March 27, 2028. Moreover, the life of a PIP lawsuit must be considered. Even though these lawsuits are not typically complicated ones, any lawsuit typically may spend a year or two on the state court trial docket. To even see appellate court decisions considering HB 837's effects on PIP litigation, you will likely need to wait two or more years after a case is filed to get a final resolution from the appellate court. So, in short, the case law illustrating how HB 837 has affected PIP litigation may not arise until a decade from now, even for claims that arise on March 27, 2023, but are not filed until near the end of the claim's limitations period. Until that data and information is available, it is impossible to know whether HB 837 will appreciably benefit the existing PIP litigation scheme.

Moreover, the current PIP system presently allows for recovery of pain, suffering, mental anguish, and inconvenience caused by bodily injury only in the event that the injury consists of a significant and permanent loss of an important bodily function, permanent injury, significant and permanent scarring or disfigurement, or death. *See* § 627.737(2), Fla. Stat. Absent death or one of the significant injuries defined in statute, a plaintiff is limited to recovering PIP benefits. *See id.* It was partially because of this exchange—i.e., under PIP, plaintiffs lost the right to recover pain and suffering damages absent permanent injury in exchange for the speedy payment of benefits—that the Florida Supreme Court upheld the PIP law as constitutional.

However, once PIP is gone, there will no longer be that threshold to recover such damages. In other words, in a bodily injury system, suit and recovery of noneconomic damages would be permitted for ***any injury***, no matter how small. This will drastically increase car accident litigation and damages payouts, worsening an already faulty system. Any experienced bodily injury attorney (plaintiff or defense) will tell you that the major battle in most automobile liability and uninsured motorist cases is over whether the plaintiff experienced a permanent injury. If PIP is abolished, in every automobile case the damages exposure will be dramatically enhanced as the jury will be allowed to award pain and suffering for every at-fault accident case. Such damages are highly subjective and hard to evaluate; as such, ending this "permanent injury" threshold for recovery of noneconomic damages will discourage settlements because it will be harder for insurers to account for such intangible damages in valuing a case. It will also be an incentive for plaintiff attorneys to take "questionable cases" as the upside for such cases will be increased, thus making minor accident cases more viable for lawsuits.

This reality further confirms that, before moving into an entirely new system for compensation of auto accidents, the Legislature should gather data on the impact of HB 837 and carefully weigh the risks and benefits of changing to a bodily injury system.

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While Florida's no-fault PIP system of auto insurance has been plagued by fraud and excessive litigation over low-dollar-value claims in the past, the recent repeal of the One-Way Attorney Fees Statute and judicial resolution of interpretations over the PIP statute's calculation of reasonable charges provisions are likely to pave the way for the PIP law to finally reduce litigation arising from car accidents and decrease excessive PIP benefit payments. However, these benefits of the recent statutory and judicial reforms have only begun to be realized, and their full impact cannot be measured for several years. The recent statutory and judicial reforms should be given sufficient time to work and to hopefully appreciably decrease PIP litigation and costs. Then, after five years or more of data on PIP litigation and benefit payment costs is accumulated following the recent statutory and judicial reforms, Florida stakeholders will be in a much better position to decide whether repealing HB 1437 is advisable. Consequently, the Institute opposes HB 1437.