

Supreme Court of Florida

No. SC01-296

MAURICE DERIUS,
Petitioner,

vs.

ALLSTATE INDEMNITY COMPANY,
Respondent.

[January 16, 2003]

SHAW, Senior Justice.

We granted review in Allstate Indemnity Co. v. Derius, 773 So. 2d 1190 (Fla. 4th DCA 2000), based on conflict with Perez v. State Farm Fire & Casualty Co., 746 So. 2d 1123 (Fla. 3rd DCA 1999), quashed sub nom. United Automobile Insurance Co. v. Rodriguez, 808 So. 2d 82 (Fla. 2001). We have jurisdiction. See art. V, § 3(b)(3), Fla. Const.

The Fourth District Court of Appeal in Derius held that a doctor's written report is not required "as a condition precedent to reducing payment of a [PIP]

bill" under section 627.736(7)(a), Florida Statutes (1999).¹ Derius sought review in this Court based on conflict with Perez, wherein the Third District Court of Appeal held that, under a different PIP provision, an insurer must pay a medical bill unless the insurer first "obtain[s], within thirty days, a medical report providing 'reasonable proof' that it is not responsible for payment."²

We have since decided United Automobile Insurance Co. v. Rodriguez, 808 So. 2d 82 (Fla. 2001), wherein we ruled that the above language in Perez was erroneous.³ The conflict between Derius and Perez thus has been resolved, and we dismiss Derius. We deny Derius's motion for attorney's fees because he is not the prevailing party before this Court.

It is so ordered.

ANSTEAD, C.J., and WELLS, PARIENTE, and QUINCE, JJ., concur.

LEWIS, J., dissents.

CANTERO, J., recused.

NO MOTION FOR REHEARING WILL BE ALLOWED.

1. See Derius, 773 So. 2d at 1191.

2. See Perez, 746 So. 2d at 1125 (emphasis omitted).

3. See Rodriguez, 808 So. 2d at 87.

Application for Review of the Decision of the District Court of Appeal - Direct Conflict

Fourth District - Case No. 4D99-3842

(Palm Beach County)

Mark Tischhauser, Tampa, Florida; and Diego Ascencio, North Palm Beach, Florida,

for Petitioner

Richard A. Sherman of the Law Offices of Richard A. Sherman, P.A., Fort Lauderdale, Florida; Joseph G. Murasko of Dickstein, Reynolds & Woods, West Palm Beach, Florida; and Peter J. Valeta of the Law Offices of Ross & Hardies, , Chicago, Illinois,

for Respondent

Tracy Raffles Gunn of Fowler, White, Boggs, & Banker, P.A., Tampa, Florida,

for Progressive Insurance Companies and Florida Defense Lawyers Association, Amici Curiae