

**IN THE CIRCUIT COURT OF THE NINTH JUDICIAL CIRCUIT,
IN AND FOR ORANGE COUNTY, FLORIDA**

**THE STAND-UP MRI OF ORLANDO, P.A,
a/a/o LLEWELLYN BAYTOPS,**

**CASE NO.: CVA1 09-43
Lower Case No.: 2006-SC-9469**

Appellant,

v.

**PROGRESSIVE AMERICAN INSURANCE
COMPANY,**

Appellee.

**ORDER DENYING IN PART AND GRANTING IN PART
MOTION FOR REHEARING AND CLARIFICATION**

THIS MATTER came before this Court for consideration of Appellee, Progressive American Insurance Company's ("Progressive") Motion for Rehearing and Clarification filed on July 11, 2012. This Court having reviewed the Motion, Response, supplemental authority, the Final Order Reversing Trial Court entered on June 18, 2012, the court file, and being otherwise fully advised in the premises, finds as follows:

Progressive seeks rehearing of this Court's opinion reversing the trial court's order entering final judgment against Appellant, The Stand-Up MRI of Orlando, P.A., a/a/o Llewellyn Baytops ("Stand-Up") that was pursuant to the trial court's order granting Progressive's motion for summary judgment. In the alternative, Progressive requests that this Court clarify or amend the portion of this Court's order granting an award of appellate attorney's fees to Stand-Up to include language that the award be conditioned on Stand-Up ultimately prevailing in the trial court action on remand as required under sections 627.428 and 627.736(8), Florida Statutes. *See Nationwide Mutual Insurance Co. v. Nu-Best Diagnostic Labs, Inc.*, 810 So. 2d 514, 515 (Fla. 5th DCA 2002); *Allstate Insurance Co. v. De La Fe*, 647 So. 2d 965, 966 (Fla. 3d DCA 1994).

It is hereby **ORDERED AND ADJUDGED** that Appellee, Progressive's motion for rehearing as to this Court's opinion reversing the trial court's order is **DENIED**. Progressive's motion for clarification as to the award of appellate attorney's fees to Appellant, Stand-Up is **GRANTED**. Accordingly, Stand-Up's motion, "Appellant's Second Amended Motion for Appellate Fees" filed April 30, 2010 is granted as to the attorneys' fees, conditioned on Stand-Up ultimately prevailing in the trial court action. All other portions of the Final Order Reversing Trial Court entered on June 18, 2012 shall remain in effect.

DONE AND ORDERED in Chambers, at Orlando, Orange County, Florida on this *16th* day of August, 2012.

/S/
A. THOMAS MIHOK
Circuit Judge

/S/
FREDERICK J. LAUTEN
Circuit Judge

/S/
TIM SHEA
Circuit Judge

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Order has been furnished via U.S. mail to: **Kevin B. Weiss, Esquire**, Weiss Legal Group, P.A., 698 North Maitland Avenue, Maitland, Florida 32751; **Betsy E. Gallagher, Esquire and Michael C. Clarke, Esquire**, Kubicki Draper, 201 North Franklin Street, Suite 2550, Tampa, Florida 33602; and **Michael Tierney, Esquire**, 918 Beard Avenue, Winter Park, Florida 32789 on the 16th day of August, 2012.

/S/
Judicial Assistant