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IN THE DISTRICT COURT OF APPEAL
THIRD DISTRICT, STATE OF FLORIDA

CASE NO. 3D23-674
L.T. CASE NO.: 2018-008394-SP-
05

NATIONWIDE INSURANCE
COMPANY OF AMERICA

Appellant/Defendant,

v.

ENVISION PHYSICAL THERAPY,
INC., a/a/o JOSEPHINE A. EVES,

Appellee/Plaintiff.

_____ /

**MOTION TO ABATE PENDING RESOLUTION OF ACTION BEFORE
FLORIDA SUPREME COURT**

COMES NOW, NATIONWIDE INSURANCE COMPANY OF AMERICA, by and through undersigned counsel, and hereby moves this Honorable Court to enter an order of abatement, and as grounds states:

1. This is an action for personal injury protection benefits. Nationwide has filed a notice of appeal from the Final Judgment rendered by the lower court on March 20, 2023, after it granted summary judgment in favor of Envision Physical Therapy, Inc. A. 3-7.

2. In Revival Chiropractic, LLC ex rel. Padin v. Allstate Ins. Co., 21-10559, 2022 WL 1799759 (11th Cir. June 2, 2022), the Eleventh Circuit certified the following question to the Florida Supreme Court:

When a personal injury protection insurance policy provides notice that it will limit payment pursuant to the statutory schedule of maximum charges, may an insurer pay 80% of the charge submitted, even when the charge submitted is less than 80% of the statutory schedule of maximum charges?

Id. at *4. A. 8-11.

3. The Florida Supreme Court has accepted review and the case is currently pending before the Court in case number SC2022-0735. Oral argument occurred on March 8, 2023. A. 12-17.

4. The certified question in Revival controls the outcome of this case. Given that the Court may issue its opinion on the precise issue in this case at any time, and that opinion will be binding on this Court, it is respectfully requested that this Court abate these proceedings, pending the Supreme Court's disposition of Revival.

5. Counsel for Envision Physical Therapy, Inc. objects to this Motion.

WHEREFORE, NATIONWIDE INSURANCE COMPANY OF AMERICA, respectfully requests that this Court enter an order of abatement

pending the Florida Supreme Court's disposition of the Revival case, SC2022-0735.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy hereof has been furnished to: **Chad A. Barr, Esquire**, Chad Barr Law, 238 North Westmonte Drive, Suite 200, Altamonte Springs, FL 32714, service@chadbarrlaw.com; linda@chadbarrlaw.com; chad@chadbarrlaw.com; and **Tim Snedaker, Esquire**, Snedaker Law, 142 W. Lakeview Avenue, Suite 2040, Lake Mary, FL 32746, tim@snedakerlaw.com, by electronic mail on April 26, 2023.

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