	:	**SUPREME COURT OF NEW JERSEY**
LAKITA D. MURRAY,	:	
	:	**Docket No.: 090246**
PLAINTIFF/PETITIONER	:	
	:	**Civil Action**
	:	
vs.	:	**BRIEF OF DEFENDANT ANTHONY**
	:	**MARRONE IN OPPOSITION TO**
CHRISTOPHER B. PUNINA,	:	**PLAINTIFF'S PETITION FOR**
CHRISTOPH PUNINA, NEW	:	**CERTIFICATION**
JERSEY PROPERTY LIABILITY	:	
GUARANTY ASSOCIATION,	:	**ON APPEAL FROM:**
A/K/A NJPLIGA,	:	**SUPERIOR COURT OF NEW JERSEY**
	:	**APPELLATE DIVISION**
DEFENDANTS/RESPONDENTS,	:	**Docket No.: A-0559-22**
	:	
AND	:	**Sat Below:**
	:	**Hon. Francis J. Vernoia, P.J.A.D.**
ANTHONY MARRONE, II,	:	**Hon. Katie A. Gummer, J.A.D.**
	:	**Hon. Kay Walcott-Henderson, J.A.D.**
DEFENDANT/RESPONDENT	:	
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CIVIL ACTION

BRIEF OF DEFENDANT MARRONE IN OPPOSITION TO PLAINTIFF'S PETITION FOR CERTIFICATION

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On The Brief

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COUNTER-STATEMENT OF QUESTION PRESENTED

Is a civil litigant seeking damages for personal injuries sustained in an accident involving private passenger automobiles precluded by N.J.S.A.39:6A-12 from presenting evidence at trial concerning the costs of future medical care when it is undisputed that: (a) the limits of her personal injury protection ("PIP") medical expense benefits have not been exhausted; and (b) payment of the costs of the future care described by her medical expert would not exhaust her PIP medical expense benefits.

COUNTER-STATEMENT OF THE MATTER PRESENTED

On August 26, 2016, Plaintiff Lakita Murray was a passenger in a car driven by Defendant Christopher Punina which collided with a car driven by Defendant Anthony Marrone as the two traveled southbound on the New Jersey Turnpike. The Punina vehicle was uninsured. Because Ms. Murray did not own or insure a car of her own and did not reside with a relative who insured a car, she applied for and received PIP benefits from the New Jersey Property-Liability Insurance Guaranty Association ("NJPLIGA") pursuant to the terms of the Unsatisfied Claim and Judgment Fund ("UCJF") Law. N.J.S.A.39:6-61, et seq. The medical expense benefit limit of that coverage was $250,000.00. At the time her personal injury lawsuit against Punina and Marrone was tried in May 2022, Plaintiff's medical expense benefit limit had not been exhausted. No evidence concerning medical

expenses incurred prior to trial was presented to the jury. The instant dispute concerns evidence of future medical expenses which the trial court permitted Plaintiff to introduce and the jury's partial award thereof based on that ruling.

Plaintiff's primary injury was a severe laceration of her head and scalp. On October 24, 2019, Dr. Arthur Perry, a board-certified plastic surgeon, examined Plaintiff and evaluated the scars resulting from her injury. Based thereon, he prepared a report which described the scarring, opined regarding procedures which could be performed to improve its appearance and set forth the costs of those procedures. Dr. Perry subsequently provided expert testimony on Plaintiff's behalf during a videotaped de bene esse deposition conducted on October 28, 2021. 2T., at 15:16 to 50:6. During that testimony, over the defense's objection, Dr. Perry testified that if Plaintiff elected to undergo the surgical revisions he described, the aggregate costs of those procedures would range from a low of $42,000.00 to a high of $160,000.00. Id., at 45:25 to 47:11. It was, and is, undisputed that "the $160,000.00 maximum amount of future medical care expenses Dr. Perry opined might be required to treat the scar on plaintiff's face would not exhaust the remainder of the PIP benefits available to [her]." Murray v. Punina, et al., A-0559-22, slip op. at 7. During her trial testimony, Plaintiff testified that she wanted to get the surgery proposed by Dr. Perry "someday" but had not yet done so because she

was "scared" and did not have "any money to pay for it."[1] Id., at 66:1 to 8; and 71:13 to 16.

Defendant Marrone's in limine motion to redact the transcript and video recording of Dr. Perry's testimony to remove their references to the costs of future surgery was denied by the trial court. 1T., at 56:25 to 58:19. Following trial, the jury returned a verdict in Plaintiff's favor which apportioned 80% of the liability for the happening of the accident to Defendant Punina and 20% to Defendant Marrone. It awarded $250,000.00 for Plaintiff's non-economic damages and $100,000.00 for her future medical expenses. 3T., at 82:16 to 87:9. Defendant Marrone subsequently moved for judgment notwithstanding the verdict to strike the award of future medical expenses. The trial court denied that motion. 4T.; Da81 to 85. On Marrone's appeal, the Appellate Division reversed and held that future medical expenses were neither admissible nor recoverable under the circumstances of this case. Plaintiff now seeks Certification to this Court for further review of that decision. In opposition, Defendant Marrone submits that the Appellate Division's order and opinion is wholly consistent with long-standing, well-established precedent and warrants no intervention by this Court.

[1] The trial court sustained the defense's objection to Plaintiff's testimony concerning her inability to pay for future treatment. Id., at 71:17 to 79:19.

STATEMENT OF REASONS FOR THE DENIAL OF PLAINTIFF'S PETITION

R. 2:12-4 sets forth the grounds upon which a Petition for Certification may be granted. As to final judgments of the Appellate Division, Certification "will not be allowed" absent a showing of special reasons. "The 'special reasons' criterion of … the rule is intended to emphasize that the peculiar circumstances of each case will ultimately whether or not certification will be granted." Comment, R. 2:12-4. It also "signals that certification will not be granted lightly." Ibid. The Rule also sets forth criteria for certification "as a guide for practitioners" attempting to convince the Court that special reasons warranting the Court's intervention exist. Thus, R. 2:12-4 also provides that:

> Certification will be granted only if the appeal presents a question of general public importance which has not been but should be settled by the Supreme Court or is similar to a question presented on another appeal to the Supreme Court; if the decision under review is in conflict with any other decision of the same or a higher court or calls for an exercise of the Supreme Court's supervision and in other matters if the interest of justice requires.

In the present case, Plaintiff does not directly address the special reasons she believes warrant that certification be granted but argues that her case presents a question "similar to a question presented on another appeal to" this Court and identifies Brehme v. Irwin, No. 089025, 2025 WL 97218 (N.J. Jan. 15, 2025) as the matter in which that question was presented. Pet., at p.1.

Brehme, however, involved a Plaintiff who sought to recover future medical expenses which she alleged would exceed the limits of her PIP coverage. See Brehme, at 5. This case does not. Rather, in this case, it is undisputed that the costs of future care forecast by Plaintiff's expert would not, under any circumstances, exceed her PIP coverage limits. Murray v. Punina, slip op., at 7. In concluding that N.J.S.A.39:6A-12 barred the introduction of evidence of Plaintiff's future medical expenses in this case, the Appellate Division relied upon a statutory rule of inadmissibility which has been in place and consistently applied since the No-Fault Act's adoption in 1972. As is more fully set forth in Point I below, Plaintiff's reliance upon amendments to the statute which followed this Court's decision in Haines v. Taft, 237 N.J. 271 (2019) is misplaced and unavailing. Like Brehme, Haines involved a claim for medical expenses in excess of the plaintiff's PIP coverage limits, and the Legislature's response to Haines was to create an exception to the statute's rule of inadmissibility for uncompensated expenses in excess of those coverage limits. As the Appellate Division herein accurately observed, the post-Haines amendments did not alter the provisions of the statute making evidence of expenses covered by Plaintiff's PIP limits inadmissible in bodily injury damage actions such as this one. Its decision, therefore, reflects the straightforward application well-established law and precedent which presents

no special reasons for this Court's intervention. It, therefore, respectfully is requested that Plaintiff's Petition be denied.

LEGAL ARGUMENT

POINT I

THE 2019 AMENDMENTS TO THE THIRD PARAGRAPH OF NJSA 39:6A-12 DID NOT CREATE A NEW CAUSE OF ACTION FOR THE RECOVERY OF FUTURE MEDICAL EXPENSES WHICH ARE COVERED BY THE PLAINTIFF'S PIP MEDICAL EXPENSE BENEFIT LIMITS.

The Appellate Division's decision in this case was based upon the provisions of N.J.S.A.39:6A-12 rendering evidence of losses collectible under PIP coverage inadmissible in actions to recover damages for bodily injuries sustained in automobile accidents. See Slip op., at p. 11-12. That rule of inadmissibility is set forth in the first paragraph of the statute and has been in place since the No-Fault Act was adopted in 1972. See Roig v. Kelsey, 135 N.J. 500, 504 (1994). An essential part of the legislative "tradeoff" designed to ensure a stable basis for funding the Act's first-party system of benefits, the rule removed fault-based medical expense claims from lawsuits such as the one brought by Plaintiff. Ibid. Nonetheless, despite the statute's clear and unambiguous terms, on the present Petition, Plaintiff argues that 2019 amendments to the statute's final (third) paragraph, excepting medical expenses in excess of a party's medical expense benefit limit from the rule of inadmissibility, created an entirely new cause of

action for the recovery of future medical expenses by plaintiffs who not only have not exhausted their PIP benefits but will not exhaust them if they have the treatment recommended by their doctors. The strained and distorted reading of those amendments required to reach that conclusion was cogently and appropriately rejected by the Appellate Division.

At the time the accident occurred, N.J.S.A. 39:6A-12 provided as follows:

> Except as may be required in an action brought pursuant to [N.J.S.A. 39:6A-9.1], evidence of the amounts collectible or paid under a standard automobile insurance policy pursuant to [N.J.S.A. 39:6A-4 and 39:6A-10], amounts collectible or paid for medical expense benefits under a basic automobile insurance policy pursuant to [N.J.S.A. 39:6A-3.1] and amounts collectible or paid for benefits under a special automobile insurance policy pursuant to [N.J.S.A. 39:6A-3.3], to an injured person, including the amounts of any deductibles, copayments or exclusions, including exclusions pursuant to subsection d. of [N.J.S.A. 39:6A-4.3], otherwise compensated is inadmissible in a civil action for recovery of damages for bodily injury by such injured person.
>
> The court shall instruct the jury that, in arriving at a verdict as to the amount of the damages for noneconomic loss to be recovered by the injured person, the jury shall not speculate as to the amount of the medical expense benefits paid or payable by an automobile insurer under personal injury protection coverage payable under a standard automobile insurance policy pursuant to [N.J.S.A. 39:6A-4 and 39:6A-10], medical expense benefits under a basic automobile insurance policy pursuant to [N.J.S.A. 39:6A-3.1] or benefits under a special automobile insurance policy pursuant to [N.J.S.A. 39:6A-3.3] to

> the injured person, nor shall they speculate as to the amount of benefits paid or payable by a health insurer, health maintenance organization or governmental agency under subsection d. of [N.J.S.A. 39:6A-4.3].
>
> Nothing in this section shall be construed to limit the right of recovery, against the tortfeasor, of uncompensated economic loss sustained by the injured party.

The final paragraph of the statute was amended in August 2019 in response to this Court's decision in Haines v. Taft, 237 N.J. 271 (2019). In Haines, the Court considered whether the statute barred a Plaintiff opting for a reduced level of PIP medical expense benefit coverage pursuant to N.J.S.A. 39:6A-4.3 from recovering the amounts of medical expenses in excess of that reduced coverage. Concluding that such expenses were not recoverable, the Court reasoned

> [w]e cannot conclude that there is evidence of a clear intention on the part of the Legislature to deviate from the carefully constructed no-fault first-party PIP system of regulated coverage of contained medical expenses and return to fault-based suits consisting solely of economic damages claims for medical expenses in excess of an elected lesser amount of available PIP coverage. (emphasis added)

Id., at 274.

In coming to its decision, the Court acknowledged that the statute could be interpreted to permit claims "for medical expenses in excess of an elected lesser amount of available PIP coverage" and invited the Legislature to make its

intent on the subject "clearly known." Ibid. The legislature responded and amended the third paragraph of the statute by adopting two new versions thereof, the first to be applied to causes of action pending on August 15, 2019 or filed on or after that date, the other to be applicable for all automobile accidents occurring on or after August 1, 2019. The present case implicates the first of those amendments. It provides as follows:

> Nothing in this section shall be construed to limit the right of recovery, against the tortfeasor, of uncompensated economic loss sustained by the injured party as defined by subsection k. of [N.J.S.A.39:6A-2] including all uncompensated medical expenses not covered by the personal injury protection limits applicable to the injured party. All medical expenses that exceed or are unpaid or uncovered by any injured party's medical expense benefits personal injury protection limits, regardless of any health insurance coverage, are claimable by any injured party as against all liable parties, including any self-funded health care plans that assert valid liens. (emphasis added)

The amendment applicable to accidents occurring on or after August 1, 2019 made "unreimbursed medical expenses not covered by the personal injury protection limits applicable to the injured party" recoverable against a tortfeasor and included a provision subjecting those expenses to "the current automobile fee schedules established pursuant to [N.J.S.A.39:6A-4.6.]." (emphasis added).

As responses to the perceived "error" in the Haines decision, the 2019 amendments must be analyzed within the context of the dispute presented in that

case which addressed whether the third paragraph of the statute could be construed "to give rise to a stand-alone right to pursue a third-party liability claim against a tortfeasor exclusively for uncompensated economic loss of medical benefits not covered due to having a lesser amount of PIP coverage." (emphasis in original) Id., at 281. In refusing to recognize such a claim, the Court reasoned that "interpreting Section 12 to allow the admission of evidence of medical expenses falling between the insured's PIP policy limit and the $250,000.00 statutory ceiling transgresses the overall design of the No-Fault Law." Id., at 292; see also, id., at 296 (Albin, J. dissenting) (majority decision precludes suit for medical expenses in excess of $15,000.00 but less than $250,000.00). Based thereon, it is clear that the Court's decision was limited to claims for medical expenses falling between a plaintiff's voluntarily reduced level of PIP coverage and the "statutory ceiling" of $250,000.00. The amendments' repeated references to "uncompensated medical expenses not covered by the personal injury protection limits applicable to the injured party," "medical expenses that exceed or are unpaid or uncovered by any party's medical expense benefits personal injury protection limits" and "unreimbursed medical expenses not covered by the personal injury protection limits applicable to the injured party" make it abundantly clear that the sole purpose of the legislative response to Haines was to address its ruling related to the recovery

of medical expenses in excess of a plaintiff's PIP limits. (emphasis added). Without any statement of an intent to address anything other than those claims, there is no basis for Plaintiff's argument that the 2019 amendments created an entirely new cause of action for the recovery of future medical expenses falling within the limits of her PIP coverage, and in fact, the statement of legislative intent cited by Plaintiff in her Petition is directly to the contrary.

In her Petition, Plaintiff cites to the Governor's Statement upon signing the 2019 amendments into law to support her argument concerning legislative intent. Pet., at 5 to 6. That Statement, however, clearly evidences a contrary intent. As quoted by Plaintiff, the Governor stated that "the statute was being amended 'to ensure that low-income drivers who must settle for lesser PIP coverage options … will not be denied the ability to recover their unreimbursed medical expenses from those who caused their injuries.'" Ibid., (quoting Governor's Signing Statement to S.2432 & S.3963 (Aug. 15, 2019) (L.2019, c.244, 245)). Plaintiff's suggestion to the contrary notwithstanding, the Governor's Statement addressed the plight of low-income drivers compelled by personal financial circumstances to opt for limits of PIP coverage less than those which could be afforded by more well-to-do drivers. Plaintiff in this case does not fall within that group. Rather, based upon her circumstances, she was, and

remains, eligible for full PIP medical expense benefits of $250,000.00. She is not a driver who was forced by personal finances to opt for lesser PIP coverage.

In addition to the foregoing, in coming to its decision, the Haines Court traced the history of the No-Fault Act's "changing priorities, shifting from full coverage to cost containment." 271 N.J. at 284. That cost containment remains a primary goal of the Act is evident from the second of the 2019 amendments subjecting recoverable excess medical expenses to the automobile medical fee schedules promulgated pursuant to N.J.S.A.39:6A-4.6. Creating a new cause of action to permit Plaintiff to recover medical expenses covered by her PIP medical expense benefit limits as damages from the Defendant herein would defeat that purpose, and an intent to do so cannot be found in the 2019 legislation. Despite the legislative reversal of the outcome reached in Haines, the purposes and goals of the No-Fault Act identified therein remain unchanged. Recognizing the cause of action sought by Plaintiff runs so counter to those purposes and goals that it must be rejected summarily.

POINT II

THE APPELLATE DIVISION CORRECTLY CONCLUDED THAT PLAINTIFF'S FUTURE MEDICAL EXPENSES WERE "COLLECTIBLE" AS THAT TERM IS USED IN THE FIRST PARAGRAPH OF N.J.S.A.39:6A-12 AND THEREFORE, WERE NEITHER ADMISSIBLE AS EVIDENCE NOR RECOVERABLE AS DAMAGES AGAINST DEFENDANT MARRONE.

N.J.S.A. 39:6A-12, is entitled "[i]nadmissibility of evidence of losses collectible under personal injury protection coverage" (emphasis added). It embodies the prohibition against pursuing insured tortfeasors for the amounts of benefits "reimbursable" by a PIP carrier. It precludes such recoveries in two ways. First, it establishes an evidential rule. Pursuant thereto, "[e]xcept as may be required in an action brought pursuant to [N.J.S.A. 39:6A-9.1] evidence of the amounts collectible or paid under a standard automobile insurance policy pursuant to [N.J.S.A. 39:6A-4 and N.J.S.A.39:6A-10], ... to an injured person, including the amounts of any deductibles, copayments or exclusions, including exclusions pursuant to subsection d. of [N.J.S.A. 39:6A-4.3], otherwise compensated is inadmissible in a civil action for recovery of damages for bodily injury by such injured person." (emphasis added). By making evidence of amounts "collectible or paid" by PIP inadmissible at trial, the statutory rule prevents a jury from including such amounts within any damage award rendered. The second way the statute addresses PIP reimbursable medical expenses is to

require a specific jury charge relating thereto. Thus, trial courts are required to instruct jurors "that, in arriving at a verdict as to the amount of the damages for noneconomic loss to be recovered by the injured person, the jury shall not speculate as to the amount of the medical expense benefits paid or payable by an automobile insurer under personal injury protection coverage payable under a standard automobile insurance policy" (emphasis added). The charge not only reinforces for jurors that PIP reimbursable medical expenses are not recoverable but it instructs them as well that the amounts of such expenses are not evidence to be considered in evaluating the nature or extent of a Plaintiff's non-economic losses. See Rybeck v. Rybeck, 141 N.J. Super. 481, 510 (Law Div. 1976) app. dism. on other grounds 150 N.J. Super. 151 (App. Div. 1977) (evidence of medical expenses does not bear on severity of injury, intensity or length of treatment, pain and discomfort involved or extent of temporary or permanent disability); see also Pitti v. Astegher, 133 N.J. Super. 145, 149 (Law Div. 1975) (evidence of future treatment costs collectible through PIP inadmissible; evidence of recommended future treatment admissible). The charge is required whenever there is testimony that a plaintiff received medical treatment following an accident. Espinal v. Arias, 391 N.J. Super. 49, 62-63 (App. Div. 2007). The failure to give it has been found to constitute error even when not requested by the defense. Torres v. Pabon, 225 N.J. 167, 190 (2016).

The 2019 amendments to N.J.S.A.39:6A-12 did not alter or amend its first two paragraphs. Based thereon, the Appellate Division concluded that interpreting the third paragraph to permit Plaintiff's recovery of future medical expenses would undermine the statute's "unamended inadmissibility provision." Slip op., at p. 22. Thus, it rejected Plaintiff's argument that the use of the term "unpaid" in the amendments was intended to permit the recovery of expenses which have not yet been incurred. Finding that to do so would "run counter to the 'collectible or paid' language used at the beginning of" the statute, the Court concluded instead that "unpaid refers to a debt or claim currently in existence, but not yet paid, and not a future expense that has not been incurred, such as plaintiff's anticipated future surgical expenses." Id., at p. 20-21.[2] Similarly, the Court rejected Plaintiff's argument that her future expenses were "uncovered" as that term was used in the 2019 amendments because "her PIP benefits are sufficient to cover those costs." Id., at p. 21. Finally, citing Plaintiff's burden of proof to establish the need for future care within a reasonable degree of medical probability, the Court rejected Plaintiff's further argument that her future medical expenses were too "speculative" to be considered "collectible" through PIP. Id., at p. 22. As a result, the Court correctly concluded that Plaintiff's future

[2] Although not cited or relied upon by the appellate court, its interpretation of the term "unpaid" as used in the 2019 amendments is consistent with N.J.S.A.39:6A-5.g. which provides that PIP benefits "shall be overdue if not paid within 60 days after the insurer is furnished written notice of a covered loss and the amount thereof." (emphasis added).

medical expenses are "collectible" through PIP, and N.J.S.A.39:6A-12's rule of inadmissibility applies to bar her claim against the Defendant for them. As set forth in Point I above, absent a clear statement of the Legislature's intent to depart from the public policy goals furthered by the No-Fault Act, there is no basis to conclude that the 2019 amendments were intended to create the new cause of action Plaintiff demands.

POINT III

THE APPELLATE DIVISION CORRECTLY CONCLUDED THAT N.J.S.A.39:6A-12'S RULE OF INADMISSIBILITY APPLIES TO BODILY INJURY DAMAGE ACTIONS FILED BY PLAINTIFFS WHOSE MEDICAL EXPENSES ARE COLLECTIBLE OR PAID BY NJPLIGA/UCJF.

In addition to arguing that the Legislature departed from the avowed purposes of N.J.S.A.39:6A-12 to create a new cause of action in her favor, Plaintiff argues alternatively that the statute does not apply to her because she received her PIP benefits from NJPLIGA/UCJF rather than from an insurer issuing a standard automobile policy. Ignoring the precedent requiring that the No-Fault Act and the UCJF laws be read in para materia relied upon by the Appellate Division, Plaintiff's argument also ignores the fact that she essentially conceded the applicability of the statute when she made no effort to introduce evidence of her past medical expenses at trial.

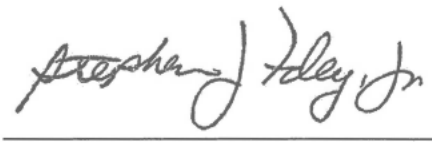
The Appellate Division concluded that "[a]lthough the UCJF does not contain its own inadmissibility provision like that of the No-Fault Act, the plain language of each statute indicates that N.J.S.A.39:6A-12 applies to PIP benefits under UCJF coverage." Slip op., at p. 23 (citing Sanders v. Langemeier, 199 N.J. 366, 379 (2009). In her Petition, Plaintiff attempts to avoid the unexceptional reasoning of the appellate court by arguing that the UCJF provides her with only a remedy of last resort to which she does not have access until she has exhausted all of her other potential remedies, including the recovery of damages from the defendants. Pet., at p. 6-7. Plaintiff's own actions belie that suggestion. That is, following the accident, she did not immediately file suit against the defendants to recover the costs of her medical care. Rather, she made application to, and recovered those costs from NJPLIGA/UCJF. Moreover, in opposing Defendant's pre- and post-trial motions to bar, Plaintiff never argued to the trial court that N.J.S.A.39:6A-12 does not apply to cases in which PIP benefits are provided through NJPLIGA/UCJF. More significantly, however, by attempting to exempt herself from the inadmissibility provision of N.J.S.A.39:6A-12, Plaintiff claims for herself a right which the UCJF does not have – the right to pursue insured tortfeasors for the amounts of its PIP payments. Unsatisfied Claim & Judgment Fund v. NJM, 138 N.J. 185, 190-91 (1984). Finally, Plaintiff's argument ignores the fact that the legislature amended the No-Fault Act in 1977 to limit insurers'

liability for PIP claims to $75,000.00 and shift the responsibility for paying amounts in excess thereof to the UCJF. See Haines, 237 N.J. at 285. As a result, since that time, the UCJF has provided PIP coverage not only for claimants eligible for benefits under the Fund Law but has done so as well for all claimants whose medical expenses exceed $75,000.00. As no credible argument can be made that the Legislature intended N.J.S.A.39:6A-12 to apply to payments made by the Fund to insured claimants but not to payments made on behalf of uninsured claimants, plaintiff's argument must be rejected out of hand.

CONCLUSION

For each of the reasons set forth above, it respectfully is submitted that no "special reasons" exist to grant certification in this matter. Plaintiff's Petition for Certification, therefore, must be denied.

Respectfully submitted,
CAMPBELL FOLEY DELANO & ADAMS



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