

---

**State of Minnesota**  
**In Court of Appeals**

---

IN RE THE CLAIMS FOR NO-FAULT BENEFITS  
AGAINST PROGRESSIVE INSURANCE COMPANY,

PROGRESSIVE INSURANCE COMPANY,

*Appellant,*

vs.

PEDRO SANCHEZ, ANETH GALINDO, FRANCISCO MARTINEZ,  
ELIZUR GARCIA, ELMER MINERO, BLANCA BONAVIDES,  
PEDRO FERNANDEZ, MARIA CASTREJON, LUIS PALLARES,

*Respondents.*

---

**APPELLANT'S REPLY BRIEF**

---

THE LOWDEN LAW FIRM, L.L.C.  
Michael W. Lowden, Esq.  
Attorney Registration No. 282558  
5001 American Blvd. W., Suite 670  
Bloomington, Minnesota 55437  
(952) 896-8000

*Attorney for Appellant*

KARNEY & ASSOCIATES  
Mark A. Karney, Esq.  
Attorney Registration No. 53855  
1300 Nicollet Ave., Suite 3045A  
Minneapolis, Minnesota 55403  
(612) 338-3100

*Attorneys for Respondents  
Elizur Garcia, Maria Castrejon,  
Francisco Martinez, Pedro  
Fernandez & Blanca Bonavides*

*(Additional Counsel Listed on Following Page)*

DOUGLAS E. SCHMIDT  
& ASSOCIATES  
Douglas E. Schmidt, Esq.  
Attorney Registration No. 96921  
1421 Wayzata Boulevard East  
Suite 200  
Wayzata, Minnesota 55391  
(952) 473-4530

*Attorney for Respondent  
Luis Pallares*

GRIFFEL & DORSHOW,  
CHARTERED  
Loren Dorshow, Esq.  
Attorney Registration No. 154945  
1809 Plymouth Road South  
Suite 333  
Minnetonka, Minnesota 55305  
(612) 529-3333

*Attorney for Respondents  
Pedro Sanchez & Aneth Galindo*

JOHNSON LAW OFFICE, P.A.  
Timothy J. Johnson, Esq.  
Attorney Registration No. 0303781  
7300 Hudson Boulevard  
Suite 290  
Oakdale, Minnesota 55128  
(651) 731-8015

*Attorney for Respondent  
Elmer Minero*

**TABLE OF CONTENTS**

	Page
STATEMENT OF FACTS .....	1
ARGUMENT .....	1
I.    THE RESPONDENTS’ CLAIM THAT THE APPELLANT HAS BEEN “RESOUNDINGLY UNSUCCESSFUL TO DATE IN ITS EFFORTS TO ESTABLISH FRAUD” IN THE FEDERAL ACTION IS COMPLETELY INACCURATE.....	1
II.   RESPONDENTS SUGGESTION THAT APPELLANT IS ATTEMPTING TO DELAY PAYMENT TO THE CLAIMANTS IN THIS MATTER HOPING THAT IT WILL “EVENTUALLY RID ITSELF OF CLAIMS THROUGH ATTRITION ARISING FROM THE COURSE OF DEPORTATION EVENTS” IS OUTRAGEOUS.....	3
CONCLUSION.....	4

## STATEMENT OF FACTS

Appellant timely filed its Notice of Appeal in this matter and then served and filed its brief on February 22, 2006. Appellant received Respondents' brief in this matter on March 27, 2006. In its brief, Respondents have misstated the facts and improperly characterized the status of the proceedings in the related Federal District Court case of Progressive Ins. Co. vs. Alivio Chiropractic Clinic, Inc., Case No. 05-CV-0951 (D. Minn. 2005). Respondents claim that Appellant "has been resoundingly unsuccessful to date in its efforts to establish fraud in the federal action."<sup>1</sup>

Furthermore, Respondents allege that Appellant is attempting to delay payment to the claimants in this matter hoping that it will "eventually rid itself of claims through attrition arising from the course of deportation events."<sup>2</sup> Pursuant to Minn. R. Civ. App. P. 128.02, subd. 3 and 131.01, subd. 3, Appellant files this reply to correct these specific errors and misstatements newly made by Respondents.

## ARGUMENT

**I. The Respondents' claim that the Appellant has been "resoundingly unsuccessful to date in its efforts to establish fraud" in the federal action is completely inaccurate.**

Appellant has already fully briefed the factual background and legal basis regarding this appeal.<sup>3</sup> The fraud allegations against the Respondents' medical providers and Attorney Mark Karney form the basis for Appellant's attempts to vacate the awards or in the alternative stay the proceedings pending the outcome of the related Federal

---

<sup>1</sup> Respondents' Brief, p. 20, FN 5

<sup>2</sup> Respondents' Brief, p. 20, FN4.

<sup>3</sup> See Appellant's Brief and Appendix.

RICO action.<sup>4</sup> Respondents, in their brief, have attempted to poison the well in this case by contending that Appellant has been unsuccessful in its efforts to establish its fraud case in the Federal District Court RICO case.<sup>5</sup> Respondents are correct that certain claims against certain Defendants have been dismissed pursuant to Rule 12 motions;<sup>6</sup> however Respondents fail to inform this Court that Defendants Alivio Chiropractic Clinic, Inc. and Dr. Joshua J. Anderson, the main treating providers at issue in this appeal, did not file Rule 12 motions and all claims are still pending against them. In addition, Defendant Alexis Aguilar's Rule 12 motion was denied with regard to all RICO claims and only the health care fraud and corporate practice of medicine claims were dismissed.<sup>7</sup>

Furthermore, Respondents have failed to inform this Court of the most significant development in the federal case, which is the fact that all of the Defendants in the case filed a joint motion to stay the proceedings, which was granted by Judge Magnuson on March 15, 2006.<sup>8</sup> The Defendants moved for a joint motion to stay the proceedings pending resolution of a related federal criminal investigation on the basis the two are so

---

<sup>4</sup> Id.

<sup>5</sup> Respondents' Brief, p. 20, FN 5.

<sup>6</sup> Judge Magnuson dismissed the RICO claims against Defendants Mark Karney and Andrea Bongart (the massage therapist) on the basis the Complaint failed to support an inference that they engaged in the operation or management of the enterprise, but the claims of unjust enrichment, constructive trust, and intentional and negligent misrepresentation against Mr. Karney remain and the claims of intentional and negligent misrepresentation against Ms. Bongart remain. See Memo. and Order, p. 5, filed October 24, 2005 (Docket #98) and Mem. and Order, p. 15, filed December 22, 2005 (Docket #128) in Progressive Ins. Co. v. Alivio Chiropractic, Inc., Case No. 05-CV-0951 (D. Minn. 2005).

<sup>7</sup> See Memo. and Order, p. 15-16, filed December 22, 2005 (Docket #128) in Progressive Ins. Co. v. Alivio Chiropractic, Inc., Case No. 05-CV-0951 (D. Minn. 2005).

<sup>8</sup> See Memo. and Order, p. 4, filed March 15, 2006 (Docket #150) in Progressive Ins. Co. v. Alivio Chiropractic, Inc., Case No. 05-CV-0951 (D. Minn. 2005).

interrelated that they cannot effectively defend themselves in the civil matter.<sup>9</sup> The United States Attorney has impaneled a grand jury to investigate the Defendants' actions and the Federal Bureau of Investigation has executed a search warrant at the business premises of Alivio Chiropractic Clinic and Dr. Joshua J. Anderson.<sup>10</sup> In addition, the government has served subpoenas on Defendants Karney and Bongart and interviewed Defendant Bongart.<sup>11</sup>

Given the fact the Defendants could be in the position of choosing between exercising their Fifth Amendment right against self-incrimination and defending themselves in the civil case, Judge Magnuson granted the stay pending further order of the court.<sup>12</sup> Due to this latest development it is ludicrous for the Respondents to suggest that Appellant is failing to prove its fraud case and their attempts to minimize the pending claims against the individuals involved in both actions are completely inaccurate.

**II. Respondents suggestion that Appellant is attempting to delay payment to the claimants in this matter hoping that it will “eventually rid itself of claims through attrition arising from the course of deportation events” is outrageous.**

Respondents, in their brief, suggest that Appellant is the one who is taking advantage of the immigration status of the claimants involved in these proceedings.<sup>13</sup> They suggest that Appellant is simply delaying payment to the claimants in the hopes that

---

<sup>9</sup> See Memo. in Support of Defendants' Joint Motion to Stay Proceedings, p. 1, filed March 7, 2006 (Docket #145) in Progressive Ins. Co. v. Alivio Chiropractic, Inc., Case No. 05-CV-0951 (D Minn. 2005)

<sup>10</sup> See Memo. and Order, p 2, filed March 15, 2005 (Docket #150) in Progressive Ins. Co. v. Alivio Chiropractic, Inc., Case No. 05-CV-0951 (D Minn. 2005).

<sup>11</sup> Id.

<sup>12</sup> Id. at p. 4

<sup>13</sup> Respondents' Brief, p 20, FN 4

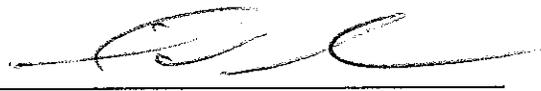
they will be deported.<sup>14</sup> Respondents could not possibly be more off target with their allegations in this respect. The claimants are the key witnesses against the Defendants in the federal case because they were the ultimate victims of the RICO enterprise. One of Appellant's main arguments against a stay of the proceedings in the federal case was its fear that the claimants would flee given their immigration status.<sup>15</sup>

### CONCLUSION

Respondents brief contained new blatant misstatements of fact regarding the related federal RICO case and erroneous allegations that Appellant is seeking to delay the proceedings in the hopes that the claimants will eventually be deported. Appellant asks that this Court consider its reply to these specific allegations and ultimately requests that the Trial Court's Order confirming the arbitration award, denying Appellant's request for a stay and denying Appellant's motion to vacate the arbitration award be reversed and remanded for additional findings of fact by the Trial Court.

Dated: 4 Apr 1 2006

THE LOWDEN LAW FIRM, LLC

By: 

Michael W. Lowden, #0282558  
Attorney for Appellant  
5001 American Boulevard West, #670  
Bloomington, MN 55437  
(952) 896-8000 ext. 1

---

<sup>14</sup> Id.

<sup>15</sup> See Plaintiff's Memo. of Law in Opposition to Defendants' Joint Motion to Stay Proceedings, p 5, filed March 10, 2006 (Docket #149) in Progressive Ins. Co. v. Alivio Chiropractic, Inc., Case No. 05-CV-0951 (D. Minn. 2005).