

THE COUNTY COURT OF THE ELEVENTH JUDICIAL CIRCUIT
IN AND FOR MIAMI-DADE COUNTY, FLORIDA
COUNTY CIVIL

OMEGA MEDICAL DIAGNOSTIC
CENTER, a/a/o Robin Carril,

Plaintiff,

Case No. 08 08510 SP 05

v.

MERCURY INSURANCE COMPANY
OF FLORIDA,

Defendant.

FINAL SUMMARY JUDGMENT

The Defendant, MERCURY INSURANCE COMPANY OF FLORIDA, (hereinafter referred to as "Mercury"), Motion for Summary Judgment came on to be heard before this Court on June 29, 2009. Counsel for the Plaintiff, and counsel for the Defendant appeared a presented argument, statutes, and case law in support of their respective positions. The Defendant also presented evidence in the form of sworn affidavits of Sara Abreau. After review the Court's file, Defendant's Motion for Summary Judgment and supporting affidavits, and considered the statutes, case law, and arguments of counsel it is hereby ordered and adjudged that the Defendants Motion for Summary Judgment is **GRANTED**, and Final Summary Judgment in favor of Defendant shall be entered on the following grounds:

1. This is an action filed by Plaintiff for personal injury protection benefits. It is undisputed by the parties that the Policy term at issue was from August 29, 2007-February 29, 2008. The date of the accident at issue is January 8, 2008. The date of the assignment of benefits relied upon by the Plaintiff for standing is January 9, 2008. And the date of service for the charges at issue all took place on January 9, 2008.

2. It is undisputed that the Defendant, Mercury, paid the Plaintiff's charges 80% of the allowed amount of the Participating Fee Schedule of Medicare Part B.

3. The issue presented is whether the Medicare Fee Schedule found in the "new" Florida Motor Vehicle No-Fault Law also known as the Personal Injury Protection ("PIP") statute should apply. This Court agrees with the Defendant's contention that the participating physicians schedule of Medicare Part B applies.

4. The Florida's legislature repealed Florida's Motor Vehicle No-Fault Law §§627.730-627.7405, effective October 1, 2007. Ch. 2003-411, §19, Laws of Fla. However, on October 11, 2007 the legislature "revived and reenacted" the No-Fault law Ch. 2007-324, §§9-19, Laws of Fla. Pursuant to the amendments, the No-Fault Law was revived and reenacted, effective January 1, 2008 and all policies in effect on January 1, 2008 were "deemed to incorporate the provisions of the Florida Motor Vehicle No-Fault Law, as revived and amended by this act." Ch. 2007-324, §21(2), Laws of Fla.

5. That is that the Florida Motor Vehicle No-Fault Law that was revived and reenacted contained the following provision:

In section 21 of the enacting legislation, the legislature specifically stated:

(2) Any personal injury protection policy in effect on or after January 1, 2008, **shall be deemed to incorporate the provisions of the Florida Motor Vehicle No-Fault Law, as revived and amended by this act.**

Ch. 2007-324, §21(2), Laws of Fla. (emphasis added).

Section 21 also included the following statement from the legislature:

(7) The Legislature finds that in order to protect the public health, safety, and welfare, it is necessary **to revise or endorse policies in effect on January 1, 2008, to add personal injury protection coverage as required by this section,** and to provide a uniform date for motor vehicle owners to obtain **or continue** such coverage **and for insurance policies to provide such coverage.**

Ch. 2007-324, §21(7), Laws of Fla. (emphases added)

6. It is clear from the foregoing that the legislature specifically identified the harms sought to be remedied by requiring existing policies to be modified to incorporate the changes in the “new” law.

7. Moreover, section 21 also required the insurers to notify the insureds that the policies would be affected by this change in the law.

8. Specifically, the insurance company was required to inform the insured: “if the policyholder already has personal injury protection coverage, that coverage will be **amended effective January 1, 2008, to incorporate legally required changes** without any additional premium and that the policyholder is not required to take any further action.” Ch. 2007-324, §21(5)(c), Laws of Fla.(emphasis added).

9. Here the evidence is that the Defendant, Mercury, sent it’s insured’s the requisite letters advising of the advent of the “new” statute and its effect.

10. Additionally, it is noted that the Mercury insurance policy at issue contained the following language under Part II – Personal Injury Protection – Coverage P, the Mercury policy states, “We will pay to or on the behalf of the injured person the following benefits.... **IN ACCORDANCE WITH THE FLORIDA MOTOR VEHICLE NO-FAULT LAW, AS AMENDED, FOR:....**” (Emphasis added)

11. In re-enacting the PIP statute, the legislature amended sub-paragraph (5) relating to “Charges for Treatment to Injured Persons” to add a new section which provides in pertinent part:

627.736(5) Charges for treatment of injured persons.--

(a) 1. Any physician, hospital, clinic, or other person or institution lawfully rendering treatment to an injured person for a bodily injury covered by personal injury protection insurance may charge the insurer and injured party only a reasonable amount pursuant to this section for the services and supplies rendered, and the insurer providing such coverage may pay for such charges directly to such person or institution lawfully rendering such treatment, if the insured receiving such treatment or his or her guardian has countersigned the properly completed invoice, bill, or claim form approved by the office upon

which such charges are to be paid for as having actually been rendered, to the best knowledge of the insured or his or her guardian. In no event, however, may such a charge be in excess of the amount the person or institution customarily charges for like services or supplies. With respect to a determination of whether a charge for a particular service, treatment, or otherwise is reasonable, consideration may be given to evidence of usual and customary charges and payments accepted by the provider involved in the dispute, and reimbursement levels in the community and various federal and state medical fee schedules applicable to automobile and other insurance coverages, and other information relevant to the reasonableness of the reimbursement for the service, treatment, or supply.

2. The insurer may limit reimbursement to 80 percent of the following schedule of maximum charges:

* * *

f. For all other medical services, supplies, and care, 200 percent of the allowable amount under the participating physicians schedule of Medicare Part B.

3. For purposes of subparagraph 2., the applicable fee schedule or payment limitation under Medicare is the fee schedule or payment limitation in effect at the time the services, supplies, or care were rendered and for the area in which such services were rendered, except that it may not be less than the applicable 2007 Medicare Part B fee schedule for medical services, supplies, and care subject to Medicare Part B.

12. In this case, the Plaintiff disputes that the amount paid are correct contending that the insurer is not entitled to limit reimbursement of the charges in accordance with the Medicare Fee Schedule.

13. As noted above, the law that enacted the changes to the No-Fault Law expressly provided that the re-enactment of the No-Fault Law was effective 1/1/08 and specifically provided several expressions of the legislature's intent that the changes be applied immediately to all No-Fault claims arising after its enactment.

14. The treatment for which payment is sought in this action occurred after 1/1/08; accordingly, by the clear language of the PIP statute, and unambiguous expression legislative intent, payment for such treatment is controlled by the No-Fault Law, as amended on October 11, 2007.

15. Further, as stated above, the Mercury Insurance policy governing reimbursement is equally clear in that payment be made pursuant to the Florida Motor Vehicle No-Fault Law, AS AMENDED.

16. As the Florida Supreme Court has repeatedly explained: “Legislative intent is the polestar by which a court must be guided in interpreting the provisions of a law. In ascertaining the legislative intent, a court must consider the plain language of the statute, give effect to all statutory provisions, and construe related provisions in harmony with one another.” *Florida Dep't. of Revenue v. New Sea Escape Cruises, Ltd.*, 894 So.2d 954, 957 (Fla.2005)(quoting *Hechtman v. Nations Title Ins. of NY*, 840 So.2d 993 (Fla. 2003)).

17. Moreover, the search for legislative intent starts with the actual language of the statute. *Kasischke, supra; M.D. v. State*, --- So.2d ----, 2008 WL 2403723, 33 Fla. L. Weekly D1572 (Fla. 1st DCA, June 16, 2008)(“The guide for statutory construction is legislative intent, which must be determined primarily from the language of the statute.”); *Arnold, Matheny & Eagan, P.A. v. First Am. Holdings, Inc.*, 982 So.2d 628, 633 (Fla. 2008)(“This Court must construe the statute in accordance with legislative intent by looking primarily at the statutory language.”).

18. “Where the wording of the Law is clear and amenable to a logical and reasonable interpretation, a court is without power to diverge from the intent of the Legislature as expressed in the plain language of the Law.” *Warren v. State Farm Mut. Auto. Ins. Co.*, 899 So. 2d 1090 (Fla. 2005), citing *United Auto. Ins. Co. v. Rogriguez*, 808 So. 2d 82, 85 (Fla. 2001).

19. In this case, the statutory language specifically states that the amendments take effect on January 1, 2008 and that all policies in existence on that date are amended and revised to incorporate the statutory changes.

20. Clearly, under a plain reading of the statute, bills for treatment rendered after January 1, 2008 should be paid in accordance with the “new” version of the no-fault law, and the Medicare Participating Physicians Fee Schedules of Medicare Part B applied to the Plaintiff charges. Since it is undisputed that they charges were paid appropriately under the Fee Schedule, there is nothing more that the Plaintiff can recover from the Defendant.

Wherefore, this Court agrees that Final Summary Judgment should be entered for the Defendant, Mercury Insurance Company of Florida, and that the Defendant, Mercury, shall go hence without day. The court reserves jurisdiction to determine the Defendant’s motions for attorneys and/or costs in accordance with this Judgment.

DONE AND ORDERED in Chambers at Miami-Dade County, Florida, this _____ day of July 2009.

Conformed Copy

OCT 06 2009

Wendell M. Graham
County Court Judge

JUDGE WENDELL M. GRAHAM

CC: Scott W. Dutton, Esquire
Rita Baez, Esquire

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