

IN THE COUNTY COURT IN AND
FOR MIAMI-DADE COUNTY, FLORIDA

THE PERSONAL INJURY CLINIC
(A/A/O YUDITH MONTERO),
Plaintiff,

CASE NO.: 09-1149 CC 21

v.

MERCURY INSURANCE COMPANY OF FLORIDA,
Defendant.

ORDER ON DEFENDANT'S MOTION FOR SUMMARY JUDGMENT

In this action, a medical provider sued an insurer over moneys owed under an assignment of benefits under the Florida Motor Vehicle No-Fault Law, Fla. Stat. 627.730, et. seq. The Plaintiff is a medical provider who submitted bills to the insurer. The insurer then paid benefits according to 200% of the Medicare Part B participating physicians fee schedule, pursuant to the 2008 version of Fla. Stat. § 627.736(5)(a)(2), which resulted in a lesser payment than what the provider had demanded. The provider then filed suit, alleging that rather than paying according to the fee schedule, the insurer should have paid 80% of the medical bills submitted, which the provider claims were reasonable.

The Defendant filed a motion for summary judgment, alleging that Fla. Stat. § 627.736(5)(a)(2) allows an insurer to reimburse providers according to amounts related to 200% of the Medicare Part B fee schedule, and that it owed nothing further to the Plaintiff as a result of having previously made payments according to that fee schedule. The parties stipulated that the 2008 version of the Florida Motor Vehicle No Fault Law applies to this action, and that Fla. Stat. § 627.736(5) is not ambiguous.

Fla. Stat. § 627.736 (5)(a)(2) states that "[t]he insurer may limit reimbursement to

80 percent of the following schedule of maximum charges:" and includes various fee schedules for treatments, including "200 percent of the allowable amount under the participating physicians schedule of Medicare Part B" for "all other medical services, supplies and care" in Fla. Stat. § 627.736 (5)(a)(2)(f). Fla. Stat. § 627.736 (5)(a)(2) appears to leave no room for interpretation, and sets forth fixed payment schedules for services provided. It does not take into account the "reasonableness" of the fee.

In this case, the policy at issue provided that the insurer "will pay to or on behalf of the insured person the following benefits [...] in accordance with the Florida Motor Vehicle No Fault Law, as amended", including "eighty percent (80%) of all reasonable expenses for [certain] medically necessary" treatments. The policy itself did not make reference to the Medicare Part B Fee Schedule or Fla. Stat. § 627.736(5)(a)(2). The only relevant provision in the policy which referenced the Florida Statutes was the provision which stated that benefits were to be paid "in accordance with the Florida Motor Vehicle No Fault Law."

This Court finds that the case of *State Farm v. Nichols*, 2009 W.L. 3674569, 34 Fla. L. Weekly D2275 (Fla. 5th DCA 2009) controls. In the *Nichols* case, the insurer was seeking to pay actual cash value for a sink hole related loss, citing Fla. Stat. § 627.707(5)(b), which provides that "[t]he insurer may limit its payment to the actual cash value of the sinkhole loss..." (emphasis added). However, in *Nichols*, the contract for insurance provided that the insurer had to pay the amount of an appraisal award. The *Nichols* court held that the statute was permissive and not mandatory, and as such the insurance contract controlled, and that the insurer had to pay according to the language of the insurance contract, which required the payment of the amount of the appraisal award. See also *Wright v. Auto Owners Ins. Co.*, 739 So.2d 180 (Fla. 2d DCA 1999), which holds that it is the policy, and

not the statute, which governs the rights and obligations of the parties. See also *Sturgis v. Fortune*, 475 So.2d 1272 (Fla. 2d DCA 1985). While Fla. Stat. § 627.736 (1)(a) is mandatory, Fla. Stat. § 627.736 (5)(a)(2) includes the permissive language "may limit".

This Court holds that Fla. Stat. 627.736(5)(a)(2) is permissive, and not mandatory. As such, the provisions of the insurance policy control. Here the contract provides that the insurer shall pay 80% of reasonable expenses for medically necessary treatments. Nothing in the contract indicates that the insurer was going to limit its payments as permitted by 627.736(5)(a)(2). If the insurer had wished to take advantage of the opportunity afforded by the Legislature to limit payment according to fixed guidelines established by the fee schedule, rather than a "reasonable" payment, then the contract must have included language that referenced that fee schedule and indicated as much. As such, it is this Court's holding that the insurer was to pay 80% of reasonable expenses as per the language of the insurance policy at issue, and whether the insurer did that remains a question of fact.

As such, it is **Ordered and Adjudged** that the Defendant's Motion for Summary Judgment is DENIED. Done and ~~Ordered~~ this day of February, 2010.

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ANA MARIA PANDO
COUNTY COURT JUDGE

HONORABLE ANA PANDO
COUNTY COURT JUDGE