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IN THE COUNTY COURT OF THE  
FIFTEENTH JUDICIAL CIRCUIT, IN AND  
FOR PALM BEACH COUNTY, FLORIDA

LAKE WORTH EMERGENCY  
CHIROPRACTIC CENTER, PA,  
as assignee of Ryan Gartner,

Case No.: 50 2009 SC 009288 MB RJ

Claim No.: 59-A111-230

Plaintiff,

vs.

STATE FARM MUTUAL  
AUTOMOBILE INSURANCE  
COMPANY,

Defendant

\_\_\_\_\_ /

**FINAL JUDGMENT FOR THE DEFENDANT**

THIS CAUSE having come before the Court for hearing on April 25, 2012 on Defendant's Motion for Final Judgment on the Pleadings and/or Final Summary Judgment and the Court having reviewed the Motion and supporting affidavit; the entire Court file; and reviewing the relevant legal authorities; having heard arguments by Counsel; having made a thorough review of the matters filed on record; and having been otherwise fully advised in the premises, it is hereby

ORDER AND ADJUDGED:

***Background***

This is an action by the Plaintiff, Lake Worth Emergency Chiropractic Center, PA, as assignee of Ryan Gartner to recover alleged overdue Personal Injury Protection ("PIP") benefits from the Defendant, State Farm Mutual Automobile Insurance Company.

On June 12, 2009, the Defendant, State Farm Mutual Automobile Insurance Company received a pre-suit demand letter from Plaintiff, dated June 9, 2009, requesting allegedly overdue PIP benefits under Florida Statute §627.736(10) for medical treatment and/or services allegedly rendered to Ryan Gartner as a result of injuries he sustained in a motor vehicle accident on October 14, 2008.

This pre-suit demand letter requested PIP benefits in the amount of \$528.72 (\$660.90 at 80%) for 11 CPT codes ranging between dates of service November 17, 2008 through January 23, 2009. The Plaintiff listed CPT code 99241 for \$85.00 for date of service November 17, 2008 on a ledger attached to the demand letter. Prior to June 12, 2009, State Farm Mutual Automobile Insurance Company had not received any CMS 1500 form or billing ledger containing CPT code 99241 for date of service November 17, 2008 in the amount of \$85.00.

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The only CPT code included on the pre-suit demand letter for date of service November 17, 2008 was CPT code 99241. The Plaintiff did not submit an additional or corrected demand letter. Thereafter, the Plaintiff filed the instant action in which it alleged that PIP benefits were due and owing in the amount of \$528.48 for alleged dates of service November 17, 2008 through January 23, 2009, which included CPT code 99241 for date of service November 17, 2008.

The Defendant has argued that the Plaintiff failed to meet the necessary condition precedent to filing suit when it submitted a pre-suit demand letter which did not comply with *Florida Statute, 627.736(10)(2009)*.

### **Undisputed Facts**

The facts material to Defendant's Motion for Final Summary Judgment are undisputed and established by the pleadings and discovery on record and the material facts are set forth below.

The Defendant issued a policy of insurance to Susan & Scott Gartner, which provided PIP benefits with limits up to \$10,000.00. This policy was in full force and effect on the date of the subject accident on October 14, 2008.

The Defendant received bills from the Plaintiff which listed that medical treatment was rendered to Ryan Gartner for dates of service November 17, 2008 through January 23, 2009.

It is undisputed that State Farm Mutual Automobile Insurance Company had not received any CMS 1500 form or bill containing CPT code 99241 for date of service November 17, 2008 in the amount of \$85.00.

The Defendant has submitted a sworn affidavit from State Farm claims representative, Deborah Hammill, who testified among other things, that State Farm never received a bill from the Plaintiff for CPT code 99241 for date of service November 17, 2008 in the amount of \$85.00.

That Plaintiff's demand letter dated June 9, 2009 and received by the Defendant on June 12, 2009, listed CPT code 99241 for date of service November 17, 2008 as being due and owing. That the Plaintiff's counsel has admitted at oral argument that CPT code 99241 in the amount of \$85.00 for date of service November 17, 2008 was listed in error on the demand letter. Additionally, Plaintiff filed its Notice of Withdrawal of CPT code 99241 for date of service November 17, 2008 on October 21, 2010.

The Plaintiff did not submit an updated demand letter to the Defendant listing the correct dates of service and amount which it alleged was due and owing. That the amount listed in Plaintiff's demand letter is incorrect as it lists an additional amount of \$85.00 for CPT code 99241 for date of service November 17, 2008.

The Plaintiff did not file a reply, affidavit or any other pleading in response to Defendant's Motion for Final Summary Judgment.

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### Findings of Law

The Court hereby adopts the foregoing findings of fact to the extent they encompass conclusions of law or missed findings of fact and conclusions of law.

*Florida Statute, 627.736(10)*, states in pertinent part:

#### 10) DEMAND LETTER

(a) As a condition precedent to filing any action for benefits under this section, the insurer must be provided with written notice of an intent to initiate litigation. Such notice may not be sent until the claim is overdue, including any additional time the insurer has to pay the claim pursuant to paragraph (4)(b).

(b) The notice required shall state that it is a "demand letter under s. 627.736(10)" and shall state with specificity:

1. The name of the insured upon which such benefits are being sought, including a copy of the assignment giving rights to the claimant if the claimant is not the insured.
2. The claim number or policy number upon which such claim was originally submitted to the insurer.
3. To the extent applicable, the name of any medical provider who rendered to an insured the treatment, services, accommodations, or supplies that form the basis of such claim; and an itemized statement specifying each exact amount, the date of treatment, service or accommodation, and the type of benefit claimed to be due . . .Id.

The legislature has mandated that the "Demand Letter" requirements of *Florida Statute, §627.736(10)* must be strictly adhered to and the failure to do so does not satisfy the demand letter condition precedent set forth in the Statute. See *MRI Associates of America, LLC (a/a/o Ebba Register) v. State Farm Fire and Casualty Company*, 61 So.3d 462 (Fla. 4th DCA 2011). The language of subsection 627.736(10)(b)(3) requires precision in a demand letter by its requirement of an "itemized statement specifying each exact amount." See *Id.* The statute mandates that the amount at issue for a bill be specified early in the claim process. *Id.* The pre-suit demand letter must provide proper notice of the exact amount due. *Id.*, citing to *Fountain Imaging of West Palm Beach, LLC. V. Progressive Express Ins. Co.*, 14 Fla. L. Weekly Supp. 614a (Fla. 15<sup>th</sup> Cir. Ct. March 30, 2007).

Furthermore, State Farm Mutual Automobile Insurance Company had never received any CMS 1500 form or bill for CPT code 99241 for date of service November 17, 2008 for \$85.00, therefore, that amount was not 'overdue' pursuant to *Florida Statute, §627.736(10)*. Pursuant to *Florida Statute, §627.736(4)(b)*, "[p]ersonal injury protection insurance benefits paid pursuant to this section shall be overdue if not paid within 30 days after the insurer is furnished written notice of the fact of a covered loss and of the

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amount of same.” State Farm Mutual Automobile Insurance Company never received notice of a fact of a covered loss for CPT code 99241 for date of service November 17, 2008, and therefore was precluded from evaluating the bill in the 30-day time frame allowed under *Florida Statute §627.736(4)(b)*. As a result, the pre-suit demand letter was sent prematurely because it included a request for PIP benefits that were never overdue pursuant to *§627.736(4)(b)*. See *MRI Associates of America, LLC (a/a/o Ebba Register) v. State Farm Fire and Casualty Company*, 61 So.3d 462 (Fla. 4th DCA 2011).

The language in the statute is clear and unambiguous. *Florida Statute, §627.736(10)* states that a demand letter “notice may not be sent until the claim is overdue” and that under *§627.736(4)(b)* “[p]ersonal injury protection insurance benefits[...]shall be overdue if not paid within 30 days after the insurer is furnished written notice of the fact of a covered loss and of the amount of same.” “Legislative intent, as always, is the polestar that guides a court's inquiry under the Florida No-Fault Law.” *United Auto. Ins. Co. v. Rodriguez*, 808 So.2d 82, 85 (Fla. 2001). The Legislature's intent must be determined primarily from the statutory language. See *Rollins v. Pizzarelli*, 761 So.2d 294, 297 (Fla. 2000). If the statutory language is clear and unambiguous, the statute must be given its plain and obvious meaning. *Id.*

The Plaintiff submitted a pre-suit demand letter to the Defendant which listed a medical service under CPT code 99241 in an attached patient ledger for date of service November 17, 2008 in the amount of \$85.00. This amount was calculated into the total amount that the Plaintiff alleged was due and owing. However, it is undisputed that this service was never billed and that it was listed in the demand letter in error. The Plaintiff did not submit an updated or corrected demand letter in an attempt to cure the defect. Instead, the Plaintiff filed suit against the Defendant and listed the same erroneous November 17, 2008 date of service and amount in its Complaint as was listed in the demand letter.

Although substantial compliance may be allowed in certain parts of the PIP statute, it is clear from legislative intent and the current case law that strict specificity must be adhered to regarding the demand letter requirement. The Plaintiff failed to strictly adhere to the demand letter requirements as required under *Florida Statute 627.736(10)* when it listed a service and charge in the demand letter that was clearly not rendered to the patient and/or submitted in error. Moreover, the Plaintiff did not attempt to remedy this error by submitting a corrected demand letter. The Plaintiff did file a Notice of Withdrawal of CPT code 99241 for date of service November 17, 2008; however, allowing a Plaintiff to cure a defective demand letter post-suit would defeat the precision required by *Florida Statute 627.736(10)*. “The statute mandates that the amount at issue for a bill be specified early in the claims process. This requirement of precision in medical bills discourages gamesmanship on the part of those who might benefit from confusion and delay.” *MRI Associates of America, LLC (a/a/o Ebba Register) v. State Farm Fire and Casualty Company*, 61 So.3d 462 (Fla. 4th DCA 2011). Thus, as the Plaintiff's demand letter lists an amount that is allegedly due and owing that is clearly incorrect, the Plaintiff has not satisfied the condition precedent to filing this lawsuit and as such has failed to comply with *Florida Statute 627.736(10)*. The statutory requirements surrounding a demand letter are significant, substantive preconditions to bringing a cause of action for PIP benefits. See *Id.*, citing to *Menendez v. Progressive Express Ins. Co.*, 35 So.3d 873, 879-880 (Fla. 2010)

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**Final Judgment**

IT IS HEREBY ORDERED AND ADJUDGED that the Defendant's, State Farm Mutual Automobile Insurance Company, Motion for Final Summary Judgment is hereby granted, and Final Judgment is hereby entered on behalf of Defendant, State Farm Mutual Automobile Insurance Company. The Plaintiff, Lake Worth Emergency Chiropractic Center, PA, shall take nothing by this action and the Defendant, State Farm Mutual Automobile Insurance Company, shall go hence without a day. The Court retains jurisdiction for the purpose of determining any motion by the Defendant to tax fees and costs.

DONE AND ORDERED in Chambers at Broward County, Florida

this \_\_\_\_\_ day of \_\_\_\_\_ **SIGNED & DATED**

**MAY 08 2012**

**JUDGE SANDRA BOSSO-PARDO**  
Honorable Sandra Bosso-Pardo  
County Court Judge

**Copies Furnished to:**  
John Gioannetti, Esq.  
Martin Berger, Esq.

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