

IN THE COUNTY COURT IN AND FOR PINELLAS COUNTY, FLORIDA

ORTHOPEDIC SPECIALISTS
as assignee of Paula Burns,

Plaintiffs,

v.

Case No: 13-000073-SC

MERCURY INSURANCE COMPANY
OF FLORIDA,

Defendant.
_____ /

FINAL SUMMARY JUDGMENT

Mercury issued a Florida Personal Auto Policy, policy number 0901 05 100046614 to Paula Burns for the policy period June 26, 2011 through December 26, 2011. The policy provided, among other things, coverage for Personal Injury Protection (“PIP”) benefits, subject to no deductible and further subject to the terms and conditions as contained in the “U-85 (05/2010)” endorsement to the policy.

The pertinent parts of Mercury’s U-85 Endorsement state:

FLORIDA PERSONAL INJURY PROTECTION ENDORSEMENT

**PART II - PERSONAL INJURY PROTECTION (“PIP”) –
COVERAGE P** is deleted and replaced by the provisions set forth in this endorsement:

* * *

The following terms apply to this Part II:

1. **PIP** benefits will be paid without regard to fault as to who caused the **accident** as required by and in accord with the **No-Fault Law** in effect on the day of the **accident**.

* * *

5. We will only pay for **medical benefits**:

* * *

b. For medically necessary services, supplies, treatment and care that do not exceed the maximum reimbursement allowance as set forth in the applicable fee schedules and payment limitations, and other payment guidelines, in the **No-Fault Law**, and any schedules and limitations under federal or state law for medical expenses.

8. As authorized by the No-Fault Law, we may use various sources of information to decide if any medical expense is reasonable and necessary and caused by an accident. These sources include but are not limited to:

- a. Exams by doctors we select. ...
- b. Review of medical records. ...
- c. Computer programs and databases. ...
- d. Published sources of medical expense information.

* * *

Additional Definitions

* * *

7. “**Medical Benefits**” means eighty (80%) percent of all reasonable expenses allowed by the **No-Fault Law**, subject to the applicable fee schedules and payment limitations, **for medically necessary . . .**

On or about December 13, 2011, Paula Burns was injured in an automobile accident. As a result of this accident, Burns received medical treatment from Orthopedic Specialists. Burns assigned her rights to PIP benefits to Orthopedic Specialists.

Orthopedic Specialists sent Mercury a bill for medical services rendered to Burns as a result of the accident in the amount of \$3,379.00. Orthopedic Specialists claimed that 80% of this amount, \$2,703.20, was owed under the Florida No-Fault Law as PIP benefits under Mercury's policy. However, Mercury paid 80% of 200% of the benefits available under Medicare Part B, \$1,921.63.

The Florida Supreme Court recently held in *Geico General Ins. Co. v. Virtual Imaging Services, Inc.*, --- So. 3d ----, 2013 WL 3332385, 38 Fla. L. Weekly S517 (Fla. July 3, 2013) that for an insurer to utilize the fee schedules and limitations set forth in Fla. Stat. §627.738(5) (a) (2) an insurer must provide in its insurance policy that it will utilize these statutory schedules and limitations.

Under the terms of Mercury's policy, Mercury applied the applicable provisions of Fla. Stat. §627.736. That statute states, in pertinent part:

(5) CHARGES FOR TREATMENT OF INJURED PERSONS.

(a) . . .

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 . . .

Applying the applicable terms of Mercury's policy and Fla. Stat. §627.736(5), Mercury reduced the billed amount of \$3,379.00 to \$2,402.04. Mercury issued payment to Orthopedic Specialists for 80% of that amount, \$1,921.63.

Mercury specifically and unambiguously advises the insured and any medical provider that accepts an assignment from the insured that "'Medical Benefits' means eighty (80%) percent of all reasonable expenses allowed by the No-Fault Law, subject to the applicable fee schedules and payment limitations." The fact that the policy says that it will pay eighty (80%) percent of all reasonable expenses allowed by the No-Fault Law, as mandated by Florida law, is not inconsistent with application of the fee schedules and limitations. *Geico, supra*.

Mercury's policy may contain terms which require some analysis and that may require the insured and the provider to refer to the terms of the No-Fault Law. However, that does not

render the policy ambiguous. *Penzer v. Transportation Ins. Co.*, 29 So. 3d 1000 (Fla. 2010); *U.S. Fire Ins. Co. v. J.S.U.B., Inc.*, 979 So. 2d 871, 877 (Fla. 2007); *Taurus Holdings, Inc. v. U.S. Fid. & Guar. Co.*, 913 So. 2d 528, 532 (Fla. 2005).

Mercury's PIP endorsement is only capable of one reasonable interpretation, the interpretation that permits Mercury to apply the statutory fee schedules and limitations, in this case, 200% of Medicare Part B. There being only one reasonable interpretation of the policy language, Mercury is permitted to limit payment by utilizing the statutory fee schedules.

It is therefore

ORDERED AND ADJUDGED that Plaintiff take nothing by this action, and that Defendant go hence without day. The Court reserves jurisdiction with respect to Defendant's claims for attorney's fees and costs.

DONE AND ORDERED this 9th of August, 2013 in chambers in Pinellas County, Florida.


HON. MYRA SCOTT MCNARY
COUNTY COURT JUDGE

Conformed copies to:
Louis Schulman, Esq.
Stephen D. Deitsch, Esq.

TRUE COPY