

IN THE CIRCUIT COURT OF THE 11TH
JUDICIAL CIRCUIT IN AND FOR
MIAMI-DADE COUNTY, FLORIDA

CIRCUIT CIVIL DIVISION
CASE NO. 13-CA-029396 (21)

ACCUMED CHIROPRACTIC & WELLNESS
CENTER, INC.,

Plaintiff,

v.
PROGRESSIVE SELECT INSURANCE
COMPANY,

Defendant.

**ORDER ON DEFENDANT'S MOTION
TO DISMISS THE FIRST AMENDED CLASS ACTION COMPLAINT**

On July 28, 2014, the Court Conducted a hearing on Defendant's Motion to Dismiss the First Amended Class Action Complaint (the "Motion"). The Court heard argument of counsel, reviewed the file, and was otherwise fully advised. It is therefore **ORDERED** and **ADJUDGED** as follows:

1. The proposed classes in this Action are defined as:

All persons who have submitted claims to PROGRESSIVE under PIP and/or MedPay insurance coverage for services or care, where PROGRESSIVE has denied payment either in whole or in part based on an assertion that an Emergency Medical Condition was not established for the injured insured. This class specifically does not include any person who is an employee of PROGRESSIVE or any person whose claim was denied in total, where the claim was applied in total to the deductible or where the claim was not paid because benefits were exhausted.

All persons who have submitted claims to PROGRESSIVE under PIP and/or MedPay insurance coverage for services or care, where PROGRESSIVE has denied payment because the health care service was for massage therapy and/or acupuncture. This class specifically does not include any person who is an employee of PROGRESSIVE or any person whose claim was denied in total,

where the claim was applied in total to the deductible or where the claim was not paid because benefits were exhausted."

(Am. Compl. at ¶¶48-49). On behalf of itself and these putative classes, the Plaintiff brings counts for declaratory relief (Count I) and breach of contract (Count II).

2. The Court finds that the necessary and individualized questions associated with the underlying PIP claims of the class will predominate in this Action and render this Action inappropriate for class action treatment as a matter of law. Plaintiff's class allegations are therefore stricken from the Amended Complaint.

3. Plaintiff's individual claims for declaratory relief and/or breach of contract are dismissed without prejudice. Plaintiff shall have thirty (30) days from the date of this Order to file an amended complaint consistent with the Court's ruling.

4. Plaintiff stipulated at the hearing that it did not have standing to sue for medical payments ("MedPay") benefits. Accordingly, Plaintiff cannot assert any claim for the recovery of MedPay benefits in any amended complaint.

DONE AND ORDERED in Chambers at Miami-Dade County, Florida, on 07/31/14.



ANTONIO ARZOLA
CIRCUIT COURT JUDGE

**No Further Judicial Action Required on THIS
MOTION
CLERK TO RECLOSE CASE IF POST
JUDGMENT**

The parties served with this Order are indicated in the accompanying 11th Circuit email confirmation which includes all emails provided by the submitter. The movant shall IMMEDIATELY serve a true and correct copy of this Order, by mail, facsimile, email or hand-delivery, to all parties/counsel of record for whom service is not indicated by the

accompanying 11th Circuit confirmation, and file proof of service with the Clerk of Court.

Signed original order sent electronically to the Clerk of Courts for filing in the Court file.

Copies furnished to:

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