

# Third District Court of Appeal

State of Florida

Opinion filed December 10, 2014.  
Not final until disposition of timely filed motion for rehearing.

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No. 3D12-3143  
Lower Tribunal No. 10-11846

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**Millennium Radiology, LLC., etc.,**  
Appellant,

vs.

**State Farm Mutual Automobile, etc.,**  
Appellee.

An Appeal from the Circuit Court for Miami-Dade County, Gladys Perez,  
Judge.

The Vaccaro Law Firm, P.A., Charles L. Vaccaro (Davie), for appellant.

Kirschbaum, Birnbaum, Lippman & Gregoire, PLLC, Nancy W. Gregoire  
(Fort Lauderdale); Roig, Tutan, Rosenberg & Zlotnick, P.A., and Mark J. Rose  
(Deerfield Beach), for appellee.

Before LAGOA, SALTER and FERNANDEZ, JJ.

PER CURIAM.

Affirmed. See Northwoods Sports Med. & Physical Rehab., Inc. v. State  
Farm Mut. Auto. Ins. Co., 137 So. 3d 1049, 1055-57 (Fla. 4th DCA 2014)(holding

that: (1) Simon v. Progressive Express Ins. Co., 904 So. 2d 449 (Fla. 4th DCA 2005), did not abrogate the English rule of priorities that the Florida Supreme Court announced in Boulevard Nat'l Bank of Miami v. Air Metal Indus., Inc., 176 So. 2d 95 (Fla. 1965)); and (2) in an action by an assignor for No Fault Insurance benefits founded on a claim of breach of contract, the post-suit exhaustion of benefits absolves the insurer from any responsibility to pay an otherwise valid claim where the exhaustion occurred (a) after the insurer paid an amount that the provider claims is less than the contract requires; (b) after the insurer was served with a filed complaint; and (c) absent bad faith in the handling of the claim by the insurer.).