

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

EAGLE REHAB THERAPY SERVICE,
a/a/o Franklin Ramos,

Case No: 06-13605 CC 25 (02)

Plaintiff,

vs.

STATE FARM FIRE AND CASUALTY
INSURANCE COMPANY,

Defendant
_____ /

**ORDER GRANTING DEFENDANT'S
MOTION FOR FINAL SUMMARY JUDGMENT**

THIS CAUSE having come to be heard on June 6, 2007, after due notice to the parties, on Defendant's, STATE FARM FIRE AND CASUALTY COMPANY, Motion for Final Summary Judgment, the Court having heard argument of counsel and the Court having been otherwise fully advised in the premises, the Court finds as follows,

ORDERED AND ADJUDGED:

Facts

1. This is an action by the Plaintiff, against the Defendant for alleged over due Personal Injury Protection (PIP) benefits.
2. On or about November 15, 2005, Lourdes L. Briz entered into a contract of insurance with the Defendant for PIP benefits. Said policy inured to the benefit of Franklin Ramos, the named insured's son, subject to the terms and conditions of the policy and Florida law.
3. On or about February 24, 2006, Mr. Ramos was allegedly involved in and injured in an automobile accident and sought medical treatment with the Plaintiff.
4. The Plaintiff submitted bills to the Defendant for payment of PIP benefits under the subject policy. The first set of bills was received by the Defendant on March 14, 2006.
5. Pursuant to the terms and conditions of its policy, which unambiguously requires a person seeking benefits under the policy to submit to an Examination Under Oath (EUO) and which provides that there is no right of action until all the terms of the

policy are met, the Defendant properly requested that Mr. Ramos submit to an EUO scheduled for April 13, 2006.

6. It is undisputed that Mr. Ramos appeared for said EUO, but refused to answer questions under oath regarding two prior automobile accidents, both of which occurred less than one year prior to the February 24, 2006 accident in issue.

7. On April 14, 2006, the day after the EUO, the Defendant sent correspondence to Mr. Ramos advising that his refusal to give pertinent information to the company during his EUO may result in a denial of coverage; however, the Defendant provided Franklin Ramos with the opportunity to comply with the terms and conditions of the policy by forwarding to the Defendant any information or materials which would aid in the analysis of his claim for coverage.

8. Mr. Ramos did not respond to the April 14, 2006 correspondence, and on or about August 14, 2006, the instant action was filed.

9. On or about March 7, 2007 the Defendant moved for final summary judgment on its affirmative defenses of noncompliance with the terms and conditions of the subject policy of insurance, arguing that the refusal to answer relevant and material questions under oath is a material breach of the policy of insurance, as well as a failure to satisfy a condition precedent to filing suit on the insurance policy.

Analysis

10. Florida law is well settled that an insured's failure to submit to an EUO is a willful and material breach of a condition precedent in the insurance contract that precludes the insured from recovery under the policy. See *Goldman v. State Farm Fire General Ins. Co.*, 660 So.2d 300, 303 (Fla. 4th DCA 1995); see also *Stringer v. Fireman's Fund Ins. Co.* 622 So.2d 145, 147 (Fla. 3d DCA 1993), *rev. denied*, 630 So.2d 1101 (Fla. 1993).

11. The provisions in insurance contracts requiring the insured to submit to an EUO are valid and binding conditions precedent to coverage. Furthermore, since the insurance policy also requires compliance with all of its requirements in order for a plaintiff to bring an action for benefits on the policy, compliance with any of the policy conditions is also a condition precedent to coverage. See *Goldman* 660 So.2d at 305.

12. In the instant case, the Plaintiff concedes that Mr. Ramos "answered some questions about his prior accidents, but not all", but argues that the failure to answer certain questions at an EUO, if anything, amounts to a breach of the cooperation clause, which is ultimately a question for a jury. Additionally, the Plaintiff contends that appearing for the EUO and answering some, but not all, of the questions amounts to substantial cooperation.

13. This Court disagrees in that the language of the subject policy clearly requires an EUO as a condition precedent which must be complied with prior to filing suit on the policy.

14. In Florida, a no action clause in an insurance contract operates as a condition precedent that bars suit against the insurer until the insured complies with the relevant policy provisions. See *Wright v. Life Ins. Co. of Ga.*, 762 So.2d 992 (Fla. 4th DCA 2000).

15. The insurance policy is a private contract between the parties and the provisions of the contract which are clear and unambiguous should be enforced by the courts and not rewritten for the parties. See *Orozco v. State Farm Mut. Auto. Ins. Co.*, 360 F. Supp. 223 (S.D. Fla. 1972).

16. In the instant case, Mr. Ramos forfeited his rights under the policy by refusing to answer material questions under oath, and by choosing not to respond to the Defendant's April 14, 2006 correspondence and remedy the situation.

17. When an insured appears for an EUO and elects to answer some, but not all, questions under oath, the insurer's investigation of the claim is clearly prejudiced, especially since the insurer is only given thirty days to evaluate its rights and obligations under the policy. See *Amador v. United Auto Ins. Co.*, 748 So.2d 307 (Fla. 3rd DCA, 1999).

18. This Court is unwilling to state that any time the insured appears for an EUO and willfully chooses not to answer relevant and material questions under oath the insured will be rewarded for the noncompliance either by the succeeding on an *Amador* argument and/or by being able to turn the noncompliance into a jury question.

19. In such a case, the condition precedent language of the policy is a nullity and the Defendant is prevented from availing itself of its rights for which it contracted.

20. Moreover, this Court finds persuasive a substantial line of cases which hold that to appear for an EUO and refuse to answer material questions under oath is a failure to give the insurer the degree of cooperation contemplated by the policy and a breach of the EUO requirement, since the obligation to submit to an EUO is not met by partial testimony. See *Allstate v. Longwell*, 735 F.Supp. 1187 (S.D.N.Y. 1990) (stating that Fifth Amendment privilege against self-incrimination did not excuse insured's refusal to answer questions under oath which amounted to a breach of a significant condition precedent and specifically rejecting argument of substantial cooperation); *West v. State Farm Fire and Cas. Co.*, 868 F.2d 348 (9th Cir. 1989) (stating that the insured's refusal to answer material questions under oath as provided for in the contract of insurance is a failure to give the insurer the degree of cooperation contemplated by the policy and is a violation of the agreement to submit to an examination under oath); *Halcome v. Cincinnati Ins. Co.*, 778 F.2d 606, 254 Ga. 742, 334 S.E. 2d 155 (1985)

(stating that refusal to testify under oath as to material questions bars recovery and insurer is entitled to summary judgment).

21. Therefore, this Court finds that Mr. Ramos' attendance at an EUO but his refusal to answer material questions under oath prior to the filing of the instant action is a material breach of the terms and conditions of the insurance contract at issue and as a matter of law relieves the Defendant of its obligation to pay PIP benefits.

DONE AND ORDERED in Chambers, at 3100 Ponce De Leon Boulevard, Room
1-4, Coral Gables Courthouse, Coral Gables, Florida 33134 this _____ day of
_____, 200_____.

MIAMI-DADE
COUNTY FLORIDA
JUN 13 2007
LAWRENCE D. KING
COUNTY COURT JUDGE

COUNTY/CIRCUIT JUDGE

Copies furnished to:
Fernando L. Roig, Esq.
Kevin Whitehead, Esq.