

JOB  
LEA

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

HERNANDEZ MEDICAL CENTER,  
CORP. A/A/O ADIEL GONZALEZ,

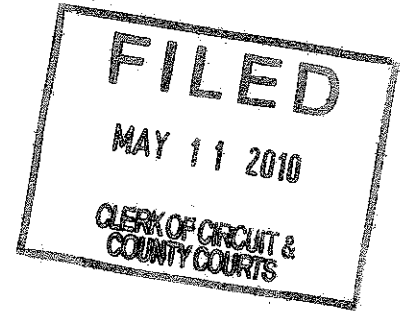
Case No: 09-5078 SP 26 (02)

Plaintiff,

vs.

STATE FARM MUTUAL  
AUTOMOBILE INSURANCE  
COMPANY,

Defendant



Thomas Mueller 202735

**ORDER GRANTING DEFENDANT'S  
MOTION FOR FINAL SUMMARY JUDGMENT AND ENTRY OF FINAL JUDGMENT**

THIS matter having come to be heard on May 5, 2010 on Defendant's Motion for Final Summary Judgment, on the issue of failure to submit to an examination under oath (EUO), and the Court having heard argument of counsel, reviewed the record evidence and case law, and being otherwise fully advised in the premises, it is hereby:

**ORDERED AND ADJUDGED** that:

Defendant's Motion is hereby **GRANTED**.

**THIS COURT FURTHER FINDS** that:

*Findings of Fact*

1. This is an action by the Plaintiff against the Defendant for alleged over due Personal Injury Protection (PIP) benefits pursuant to a policy of automobile insurance.
2. The Plaintiff submitted medical bills to the Defendant for payment of medical services allegedly rendered to Adiel Gonzalez as a result of a purported January 11, 2009 automobile accident. The Defendant received the Plaintiff's first set of medical bills on February 23, 2009.
3. Pursuant to the terms and conditions of the subject policy of insurance, the Defendant properly requested that Mr. Gonzalez submit to an examination under oath (EUO) scheduled for March 25, 2009; however, Mr. Gonzalez failed to appear.
4. The EUO was necessary for the Defendant to complete its investigation of the Plaintiff's claim for PIP benefits.

5. Following the March 25, 2009 failure to appear, Mr. Gonzalez requested that the EUO be re-scheduled. The Defendant complied with Mr. Gonzalez's request and rescheduled the EUO for April 10, 2009, a date and time coordinated with Mr. Gonzalez.

6. On April 10, 2009, Mr. Gonzalez appeared for the EUO, but refused to answer relevant and material questions under oath, prematurely terminating the EUO. The transcript of the April 10, 2009 partial EUO evidences that Mr. Gonzalez was advised that his failure to complete the EUO and cooperate with Defendant, as required by the terms of the insurance policy, would result in a denial of the claim. In response, Mr. Gonzalez stated, "Deny the claim, I don't care."

7. Thereafter, the instant action was filed by the Plaintiff. At no time prior to suit did Mr. Gonzalez submit to the requested EUO.

#### *Conclusions of Law*

8. The Court finds that an EUO provision in an insurance policy is a valid and binding condition precedent to coverage that must be complied with in order to maintain an action for PIP benefits. See *Stringer v. Fireman's Fund Ins. Co.*, 662 So.2d 145 (Fla. 3d DCA 1993), *rev. denied*, 630 So.2d 1101 (Fla. 1993); *Goldman v. State Farm Fire General Ins. Co.*, 660 So.2d 300 (Fla. 4<sup>th</sup> DCA 1995); and *West Dixie Rehabilitation & Medical Ctr. a/a/o Pascal St. Phar v. State Farm Fire and Casualty Co.*, 10 Fla. L Weekly Supp. 16a (Fla. 11<sup>th</sup> Cir. Ct. 2002).

9. The issue before the Court, however, is whether, Mr. Gonzalez's appearance for the EUO, but refused to answer even basic informational-- as well as relevant and material-- questions was tantamount to a "failure to appear" and a breach of the EUO requirement.

10. After reviewing the record evidence, including the testimony on April 10, 2009, and hearing argument of counsel, the Court finds that Mr. Gonzalez's refusal to answer material questions under oath is tantamount to a failure to comply with the EUO provision in the subject insurance policy.

11. The Court disagrees that under the facts of this case, and in light of Mr. Gonzalez's brief deposition testimony, merely appearing for an EUO and answering some, but not all, questions amounts to substantial compliance with the EUO provision, which is generally a question of fact for a jury's determination. There are cases, such as the one at bar, where the facts are such that mere appearance may not satisfy the requirement of substantial compliance with the cooperation clause of the policy. See *Calikos X-Ray Diagnostic a/a/o Isabel Buergo v. State Farm Fire and Casualty Co.*, 16 Fla. L. Weekly Supp. 866a (Fla. 11<sup>th</sup> Cir. Ct. 2009) (holding that refusal to answer material questions under oath prior to filing suit is a material breach of the terms and conditions of the insurance contract and as a matter of law relieves insurer of its obligation to pay PIP benefits; court granted motion for summary judgment); *Eagle Rehab Therapy Service a/a/o Franklin Ramos v. State Farm Fire and Casualty Co.*, 14 Fla. L. Weekly Supp 894a (Fla. 11<sup>th</sup> Cir. Ct. 2007) (granting defendant's motion for summary judgment, reasoning that "[w]hen an insured appears for an EUO and elects to answer some, but not all, questions under oath, the

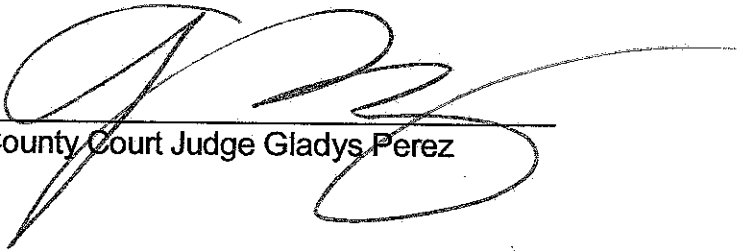
insurer's investigation of the claim is clearly prejudiced"); and *Nu-Tech Imaging P.A. a/a/o Marcelo B. Silva v. Bristol West Ins. Co.*, 16 Fla. L. Weekly Supp. 871a (Fla. 15<sup>th</sup> Cir. Ct. 2009) (granting defendant's motion for summary judgment where insured appeared at the EUO, admitted to fraud and then terminated the EUO, reasoning that by terminating the EUO, the insured denied the insurer the opportunity to ask further questions regarding the fraud).

12. Accordingly, this Court finds that as a matter of law, Mr. Gonzalez's willful failure to answer relevant and material questions under oath is a failure to comply with the EUO requirement in the subject policy and a material breach of a condition precedent.

Pursuant to this Order Granting Defendant's Motion for Final Summary Judgment, it is adjudged that the Plaintiff take nothing by this action and that Defendant, shall go hence without day.

The Court shall retain jurisdiction over the case with respect to the Defendant's entitlement to attorney's fees and costs and the amount thereof.

DONE AND ORDERED in Chambers, at Miami, Miami-Dade, Florida this <sup>MAY 11 2010</sup> \_\_\_\_\_ day  
of \_\_\_\_\_, 200\_\_\_\_\_.

  
County Court Judge Gladys Perez

Copies furnished to:  
Jessica R. Zlotnick, Esq.  
Wagih Shirazi, Esq.