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IN THE COUNTY COURT IN AND FOR  
PALM BEACH COUNTY

NORTHWOOD SPORTS MEDICINE  
AND PHYSICAL REHABILITATION,  
INC. (James Krumenacker),

Case No: 50 2009 SC 007991 SB RS

Claim No.: 59-Z872-952

Plaintiff,

vs.

STATE FARM MUTUAL  
AUTOMOBILE INSURANCE  
COMPANY,

Defendant

**ORDER GRANTING DEFENDAN'T FINAL SUMMARY JUDGMENT**

THIS CAUSE having come before the Court on August 25 2011, pursuant to Defendant's Motion for Final Summary Judgment, and the Court having reviewed the file, considered the arguments and Memorandums of Law submitted by the parties, and being otherwise fully advised in this matter, does hereby make the following findings of fact and conclusions of law:

**FINDINGS OF FACT**

1. The Plaintiff, Northwood Sports Medicine and Physical Rehabilitation, Inc. (James Krumenacker) (hereinafter referred to as "Northwood" or "Plaintiff") in this matter is a healthcare provider who allegedly rendered treatment to the State Farm Mutual Automobile Insurance Company insured, James Krumenacker for injuries he allegedly sustained in a motor vehicle accident which occurred on or about January 22, 2008.
2. James Krumenacker (the "insured") was covered under a policy of insurance issued by the Defendant, State Farm Mutual Automobile Insurance Company (hereinafter referred to as "State Farm") which provided \$10,000.00 in Personal Injury ("PIP") benefits and \$5,000.00 in Medical Payments Coverage "MedPay") benefits.
3. On January 25, 2008, James Krumenacker assigned his benefits to the Plaintiff, Northwood.
4. The Plaintiff timely submitted bills to STATE FARM for the medical services rendered to James Krumenacker.

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5. State Farm paid some of these bills at the full charged amount while reducing certain charges and denying certain charges.
6. On December 12, 2008, the Plaintiff sent a demand letter requesting overdue PIP and MedPay benefits for dates of service January 25, 2008 through November 19, 2008. State Farm timely responded to this demand letter on January 7, 2009.
7. The medical records reflect that Mr. Krumenacker continued to treat with the Plaintiff until September 23, 2009 where at that time MedPay benefits was exhausted beyond its limits after State Farm paid the Plaintiff \$27.22 on October 1, 2008 for a medical bill in the amount of \$280.00.
8. On July 10, 2009, State Farm received a medical bill for \$310.00 from Plaintiff and paid \$272.86, exhausting PIP Benefits. Thus, all PIP and MedPay benefits were exhausted in this claim as of October 1 2008.
9. According to Sate Farm's PIP Log, it made a total of 71 payments to medical providers to cover services provided to James Krumenacker before PIP and MedPay benefits, with 61 payments being made to the Plaintiff.
10. On July 21, 2009 the Plaintiff served its Complaint on State Farm for "Damages for No-Fault Benefits". Plaintiff's Complaint was served on State Farm after PIP benefits were exhausted but before MedPay benefits was exhausted.
11. At no time before this hearing on Defendant's Motion for Summary Judgment has the Plaintiff contended in any of its pleadings that the actions taken by State Farm in this claim were done in bad faith.

### CONCLUSION OF LAW

The issue presented to this Court is whether State Farm, which issued a PIP and Medpay policy to an insured, has a legal obligation to pay bills submitted by the Plaintiff after the contractual amount of benefits have been exhausted after the Plaintiff has filed suit.

The Defendant has moved for Summary Judgment based on the exhaustion of benefits claiming that Defendant has fulfilled its contractual obligations to the insured and cannot be required to pay above the contracted maximum amount of benefits. The Plaintiff has not claimed bad faith against the Defendant in any pleading filed with the Court. However, the Plaintiff has alleged that the Defendant's Motion for Summary Judgment must fail based on, among other things, that State Farm wrongly used unpaid interest misrepresenting it was benefits, that State Farm misled the insured and Northwood, that State Farm is a manipulator and wrongdoer, and that due process requires all reasonable inferences be taken in favor of the Plaintiff and that post suit events not be considered on the issue of liability.

The Defendant relies primarily on the Fourth District Court of Appeal decision, Simon v. Progressive Express Insurance Company, 904 So.2d 449 (Fla. 4<sup>th</sup> DCA 2005); and the Fifth District Court of Appeal decision, Progressive American Insurance v. Stand Up MRI of Orlando, 990 So.2d 3 (5<sup>th</sup> DCA 2008).

The Plaintiff has alleged that State Farm misapplied the 2008 fee schedule in a policy that made no express reference to it and there were not other basis to reduce the allowed amount. Moreover the fee schedule reductions were erroneous as a matter of law pursuant to Kingsway Amigo Ins. V. Ocean Health, Inc. 63 So.3d 63 (Fla. 4<sup>th</sup> DCA 2011). Additionally, that after wrongly reducing the Plaintiff's claim submitted in the demand, State Farm paid out subsequent claims which exhausted benefits.

The Court finds the arguments of both parties to be compelling. The Defendant submits that it is only obligated to make payments of benefits up to the limit that it contracted with its insured. Once these limits have been exhausted then the Defendant has met its contractual obligations, and barring bad faith, there can be no damages awarded in this lawsuit. When the Plaintiff accepted the Assignment of Benefits from the patient, they did so knowing that there was a finite limit in benefits and that there were possible other providers that would be getting paid from those benefits even after suit was filed. Moreover, the Defendant, State Farm continued to pay Northwood the majority of benefits after the demand letter was received and after the instant lawsuit was filed.

In addition to the Plaintiff claiming that the State Farm underpaid this claim pursuant to Kingsway, the Plaintiff submits legal theories which include the theory that benefits are not exhausted as subsequent payments made to other providers were gratuitous and that according to the English Rule of Priorities that interest owed Northwood has been marked as benefits, and such, are still available. Moreover, the Plaintiff submits that as State Farm made a unilateral mistake in law by applying F.S. 627.736(5)(a)2f to Plaintiff's claim that it should not be provided with any relief. See Feldman v. Kritch, 824 So.2d 274 (Fla. 4<sup>th</sup> DCA 2002). The Plaintiff also theorizes that State Farm could have reduced a portion of the damage it caused by these disservices by issuing checks or using interpleader after December 5, 2008 while its fee schedule issue made its way through the courts. See Margiotta v. State Farm Mut. Auto. Ins. Co., 622 So.2d 135 (Fla. 4<sup>th</sup> DCA 1993)

The Court finds that the following language in Simon, 904 So.2d 449 entitled the Defendant to entry of a final summary judgment despite the fact that State Farm had notice prior to exhaustion of benefits:

We decline to create a requirement that an insurance company set aside a 'reserve' fund for claims that are reduced or denied. Simon does not content that the denial or reduction of its claim was made in bad faith, or that Progressive had manipulated, or acted improperly in reducing it. If we were to accept Simon's theory that a 'reserve' or 'hold' provision be automatically applied to any funds at the time a claim is submitted, it would result in unreasonable exposure of the insurance company and would be to the detriment of the insured and other providers with properly

submitted claims. Under such a theory, all potential payments to a service provider that were denied, or were subject to a reduction, would have to be held in reserve until the statute of limitations period expired or a suit was filed and concluded. This would delay and reduce availability of funds for the payment of claims to other providers and would be inconsistent with the PIP statutes prompts pay provisions.

See §627.613, and 627.662(7), Fla. Stat. (provision established to expedite payment to service providers). It is the obligation of insurance companies to attempt to settle as many claims as possible. See Farinas v. Florida Farm Bureau General Ins. Co., 850 So.2d 555 (Fla. 2003). It is the also the prerogative of insurance companies to pay, reduce, or deny claims. *Id.*

Moreover, in Stand Up MRI of Orlando, 990 So.2d 3, the Fifth District Court of Appeal followed the Simon court's reasoning that an insurer cannot hold money in a reserve fund, while going further to comment that a demand letter does not require an insurer to hold funds in reserve it is merely a condition precedent to filing suit. The Court also agreed with the common-sense reasoning of the Circuit Court in Neuro-Imaging Associates, P.A. v. Nationwide Insurance Co., 10 Fla. L. Weekly Supp. 738A (Fla. 15<sup>th</sup> Jud.Cir.Ct.2002), a case in which benefits were exhausted after suit was filed and served.

Thus the foregoing language indicates that the Court in Simon and subsequently followed by Stand Up MRI of Orlando, contemplated that an insurance company would receive claims from providers after a lawsuit was filed and approved the company's payment of these later claims to other health care providers. It is therefore

ORDERED AND ADJUDGED that the Defendant's Motion for Final Summary Judgment is hereby granted. Judgment is entered in favor of the Defendant and the Plaintiff shall take nothing by this action and the Defendant shall go hence without a day. The Court reserves jurisdiction to determine attorneys' fee and taxable costs.

DONE AND ORDERED in Chambers, at South County Courthouse, 200 W. Atlantic Avenue, Delray Beach, FL 33444 this \_\_\_\_\_ day **SIGNED & DATED**, 2011

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JUDGE REGINALD R. CORLEW  
COUNTY COURT JUDGE

Copies furnished to:  
Stephen G. Mellor, Esq.  
Charles J. Kane, Esq.