General Docket

United States Court of Appeals for the Eleventh Circuit

Court of Appeals Docket #: 21−10559 **Docketed:** 02/19/2021
Nature of Suit: 4110 Insurance
Revival Chiropractic LLC v. Allstate Insurance Company, et al
Appeal From: Middle District of Florida
Fee Status: Fee Paid

Case Type Information:
1) Private Civil
2) Diversity
3) −

Originating Court Information:
District: 113A−6 : 6:19−cv−00445−PGB−LRH
Court Reporter: Koretta Stanford
Civil Proceeding: Paul G. Byron, U.S. District Judge
Secondary Judge: Leslie R. Hoffman, U.S. Magistrate Judge
Date Filed: 03/07/2019
Date NOA Filed:
02/18/2021

Prior Cases:
None

Current Cases:

	Lead	Member	Start	End
Cross−appeal	21−10559	21−10629	02/24/2021	

REVIVAL CHIROPRACTIC LLC, on behalf of Jazmine Padin on behalf of Natalie Rivera	Plaintiff − Appellee−Cross Appellant	Chad Andrew Barr Direct: 407−599−9036 [COR LD NTC Retained] Law Office of Chad A. Barr, PA 238 N WESTMONTE DR STE 200 ALTAMONTE SPRINGS, FL 32714 Lawrence M. Kopelman Direct: 954−462−6855 [COR LD NTC Retained] Law Offices of Lawrence M. Kopelman, PA Firm: 954−588−4114 1 W LAS OLAS BLVD STE 500 FORT LAUDERDALE, FL 33301 Alyson Michelle Laderman Direct: 407−777−8541 [COR NTC Retained] Bloodworth Law, PLLC 801 N MAGNOLIA AVE STE 216 ORLANDO, FL 32803
versus		
ALLSTATE INSURANCE COMPANY	Defendant − Appellant−Cross Appellee	Peter J. Valeta Direct: 312−474−7895 [COR LD NTC Retained] Cozen O'Connor Firm: 312−474−7900 123 N WACKER DR STE 1800 CHICAGO, IL 60606−1743 Catherine L. Fitzpatrick Direct: 312−862−4047 [COR NTC Retained] Kirkland & Ellis, LLP Firm: 312−861−2000 300 N LASALLE ST STE 3800 CHICAGO, IL 60654 Richard C. Godfrey Direct: 312−862−2391 [COR NTC Retained] Kirkland & Ellis, LLP

	Firm: 312−861−2000 300 N LASALLE ST STE 3800 CHICAGO, IL 60654 Alexandra Jordan Schultz Direct: 561−515−5205 [NTC Retained] Cozen O'Connor 1 N CLEMATIS ST STE 510 WEST PALM BEACH, FL 33401
ALLSTATE PROPERTY & CASUALTY INSURANCE COMPANY Defendant − Appellant−Cross Appellee	Peter J. Valeta Direct: 312−474−7895 [COR LD NTC Retained] (see above) Catherine L. Fitzpatrick Direct: 312−862−4047 [COR NTC Retained] (see above) Richard C. Godfrey Direct: 312−862−2391 [COR NTC Retained] (see above) Alexandra Jordan Schultz Direct: 561−515−5205 [NTC Retained] (see above)

REVIVAL CHIROPRACTIC LLC,
on behalf of Jazmine Padin,
on behalf of Natalie Rivera,

Plaintiff − Appellee −
Cross−Appellant,

versus

ALLSTATE INSURANCE COMPANY,
ALLSTATE PROPERTY AND CASUALTY INSURANCE COMPANY,

Defendants − Appellants −
Cross−Appellees.

06/02/2022		Non−Dispositive opinion issued by court. Certified Question to FL Supreme Court. Opinion type: Non−Published. Opinion method: Per Curiam. Motion to certify was granted, See 06/02/2022 opinion)(WHP/RSR/ALB)−−[Edited 06/02/2022 by DHC] [Entered: 06/02/2022 10:52 AM]
05/27/2022		Response to Supplemental Authority (28J) filed by Appellants−Cross Appellees Allstate Insurance Company and Allstate Property & Casualty Insurance Company. [21−10559] (ECF: Peter Valeta) [Entered: 05/27/2022 11:02 AM]
05/26/2022		Supplemental Authority filed by Appellee−Cross Appellant Revival Chiropractic LLC. [21−10559] (ECF: Chad Barr) [Entered: 05/26/2022 11:00 AM]
05/26/2022		Response to Supplemental Authority (28J) filed by Appellee−Cross Appellant Revival Chiropractic LLC. [21−10559] (ECF: Chad Barr) [Entered: 05/26/2022 10:59 AM]
05/24/2022		Supplemental Authority filed by Appellants−Cross Appellees Allstate Insurance Company and Allstate Property & Casualty Insurance Company. [21−10559] (ECF: Peter Valeta) [Entered: 05/24/2022 01:54 PM]
05/20/2022		Oral argument held this date. Oral Argument presented by Richard C. Godfrey for Appellants−Cross Appellees Allstate Insurance Company and Allstate Property & Casualty Insurance Company and Chad Andrew Barr for Appellee−Cross Appellant Revival Chiropractic LLC. [Entered: 05/20/2022 01:32 PM]
05/10/2022		Response to Supplemental Authority (28J) filed by Appellants−Cross Appellees Allstate Insurance Company and Allstate Property & Casualty Insurance Company. [21−10559] (ECF: Peter Valeta) [Entered: 05/10/2022 02:18 PM]
05/09/2022		Supplemental Authority filed by Appellee−Cross Appellant Revival Chiropractic LLC. [21−10559] (ECF: Chad Barr) [Entered: 05/09/2022 08:35 AM]
04/04/2022		Response to Supplemental Authority (28J) filed by Appellee−Cross Appellant Revival Chiropractic LLC. [21−10559] (ECF: Chad Barr) [Entered: 04/04/2022 10:45 AM]
03/31/2022		Supplemental Authority filed by Appellants−Cross Appellees Allstate Insurance Company and Allstate Property & Casualty Insurance Company. [21−10559] (ECF: Peter Valeta) [Entered: 03/31/2022 01:01 PM]
03/29/2022		Response to Supplemental Authority (28J) filed by Appellants−Cross Appellees Allstate Insurance Company and Allstate Property & Casualty Insurance Company. [21−10559] (ECF: Peter Valeta) [Entered: 03/29/2022 11:52 AM]
03/25/2022		Supplemental Authority filed by Appellee−Cross Appellant Revival Chiropractic LLC. [21−10559] (ECF: Chad Barr) [Entered: 03/25/2022 11:42 AM]
03/22/2022		Response to Supplemental Authority (28J) filed by Appellants−Cross Appellees Allstate Insurance Company and Allstate Property & Casualty Insurance Company. [21−10559] (ECF: Peter Valeta) [Entered: 03/22/2022 12:11 PM]
03/21/2022		Supplemental Authority filed by Appellee−Cross Appellant Revival Chiropractic LLC. [21−10559] (ECF: Chad Barr) [Entered: 03/21/2022 03:58 PM]
03/21/2022		Response to Supplemental Authority (28J) filed by Appellee−Cross Appellant Revival Chiropractic LLC. [21−10559] (ECF: Chad Barr) [Entered: 03/21/2022 02:50 PM]
03/16/2022		Supplemental Authority filed by Appellants−Cross Appellees Allstate Insurance Company and Allstate Property & Casualty Insurance Company. [21−10559] (ECF: Peter Valeta) [Entered: 03/16/2022 12:32 PM]
03/08/2022		Attorney Chad Andrew Barr for Appellee−Cross Appellant Revival Chiropractic LLC hereby acknowledges receipt of a copy of the printed calendar for 05/20/2022. Chad A. Barr − (407)599−9036 −

		For the Appellee/Cross−Appellant will present argument. [21−10559] (ECF: Chad Barr) [Entered: 03/08/2022 01:13 PM]
03/08/2022		Oral argument scheduled. Argument Date: Friday, 05/20/2022 Argument Location: Miami, FL. [Entered: 03/08/2022 11:01 AM]
03/07/2022		Attorney Richard C. Godfrey for Appellants−Cross Appellees Allstate Insurance Company and Allstate Property & Casualty Insurance Company hereby acknowledges receipt of a copy of the printed calendar for 05/20/2022. Richard C. Godfrey will present argument. [21−10559] (ECF: Richard Godfrey) [Entered: 03/07/2022 02:35 PM]
03/04/2022		Calendar issued as to cases to be orally argued the week of 05/16/2022 in Miami, Florida. Counsel are directed to electronically acknowledge receipt of this calendar by docketing the Calendar Receipt Acknowledged event in ECF (a document upload is not required). [Entered: 03/04/2022 09:54 AM]
02/09/2022		Assigned to tentative calendar number 19 in Miami during the week of May 16, 2022. [Entered: 02/09/2022 04:29 PM]
01/14/2022		Response to Supplemental Authority (28J) filed by Appellee−Cross Appellant Revival Chiropractic LLC. [21−10559] (ECF: Chad Barr) [Entered: 01/14/2022 12:22 PM]
01/14/2022		Response to Supplemental Authority (28J) filed by Appellee−Cross Appellant Revival Chiropractic LLC. [21−10559] (ECF: Chad Barr) [Entered: 01/14/2022 11:39 AM]
01/11/2022		Supplemental Authority filed by Appellants−Cross Appellees Allstate Insurance Company and Allstate Property & Casualty Insurance Company. [21−10559] (ECF: Peter Valeta) [Entered: 01/11/2022 03:01 PM]
01/07/2022		Received paper copies of EBrief filed by Appellee−Cross Appellant Revival Chiropractic LLC. [Entered: 01/10/2022 11:13 AM]
01/05/2022		Reply Brief filed by Appellee−Cross Appellant Revival Chiropractic LLC. [21−10559] (ECF: Chad Barr) [Entered: 01/05/2022 12:05 PM]
12/06/2021		ORDER: Motion for extension to file reply brief filed by Appellee−Cross Appellant Revival Chiropractic LLC is GRANTED by clerk. [9545975−2] Reply brief due on 01/05/2022. **Any request for a second or subsequent extension of time shall be subject to 11th Cir. R. 31−2(d).** [Entered: 12/06/2021 11:56 AM]
12/06/2021		*MOTION for extension of time to file reply brief to 01/05/2022 filed by Revival Chiropractic LLC. Motion is Unopposed. [9545975−1]* [21−10559] (ECF: Chad Barr) [Entered: 12/05/2021 10:50 AM]
11/22/2021		Received paper copies of EBrief filed by Appellants−Cross Appellees Allstate Insurance Company and Allstate Property & Casualty Insurance Company. [Entered: 11/23/2021 10:15 AM]
11/16/2021		Cross Appellee Reply Brief filed by Appellants−Cross Appellees Allstate Insurance Company and Allstate Property & Casualty Insurance Company. [21−10559] (ECF: Peter Valeta) [Entered: 11/16/2021 05:23 PM]
11/15/2021		Received paper copies of EBrief filed by Appellee−Cross Appellant Revival Chiropractic LLC. [Entered: 11/16/2021 03:59 PM]
11/12/2021		Appellee−Cross Appellant's Brief filed by Appellee−Cross Appellant Revival Chiropractic LLC. [21−10559] (ECF: Chad Barr) [Entered: 11/12/2021 07:53 AM]
11/08/2021		ORDER: “Appellee’s Unopposed Motion for Leave to Exceed Word Limits in Plaintiff−Appellee/Cross−Appellant’s Response Brief and Cross−Appeal Opening Brief” is DENIED. Within 14 days after the date of this order, Appellant must file a brief that complies with the Court’s rules. [9516446−2] KCN (See attached order for complete text) [Entered: 11/08/2021 03:14 PM]

10/27/2021		RESPONSE to Motion filed by Appellee−Cross Appellant Revival Chiropractic LLC [9516446−2] filed by Attorney Peter J. Valeta for Appellants−Cross Appellees Allstate Insurance Company and Allstate Property & Casualty Insurance Company. [21−10559] (ECF: Peter Valeta) [Entered: 10/27/2021 11:23 AM]
10/27/2021		*MOTION UNOPPOSED MOTION FOR LEAVE TO EXCEED WORD LIMITS IN PLAINTIFF−APPELLEE/CROSS−APPELLANT'S RESPONSE BRIEF AND CROSS−APPEAL OPENING BRIEF filed by Revival Chiropractic LLC. Motion is Unopposed. [9516446−1]* [21−10559]−−[Edited 10/27/2021 by CRL, to correct relief code] (ECF: Chad Barr) [Entered: 10/27/2021 09:51 AM]
10/08/2021		ORDER: Motion for extension to file by Appellants−Cross Appellees Allstate Insurance Company and Allstate Property & Casualty Insurance Company is GRANTED by clerk. [9501630−2]Cross−Appellee brief is due on 11/10/2021. **Any request for a second or subsequent extension of time shall be subject to 11th Cir. R. 31−2(d).** [Entered: 10/08/2021 10:58 AM]
10/06/2021		*MOTION for extension of time to file reply brief to 11/10/2021 filed by Allstate Insurance Company and Allstate Property & Casualty Insurance Company. Motion is Unopposed. [9501630−1]* [21−10559] (ECF: Peter Valeta) [Entered: 10/06/2021 04:54 PM]
09/30/2021		Received paper copies of EBrief filed by Appellee−Cross Appellant Revival Chiropractic LLC. [Entered: 10/01/2021 02:59 PM]
09/27/2021		OVER WORD COUNT *** Appellee−Cross Appellant's Brief filed by Appellee−Cross Appellant Revival Chiropractic LLC. [21−10559]−−[Edited 10/27/2021 by CRL] (ECF: Chad Barr) [Entered: 09/27/2021 03:22 PM]
08/31/2021		ORDER: The motion for an extension of time to and including September 27, 2021 in which to file Appellee's brief is GRANTED, with the appendix, if any, due seven (7) days from the filing of the brief. [9466852−2] RSR (See attached order for complete text) [Entered: 08/31/2021 09:59 AM]
08/23/2021		*MOTION for extension of time to file appellee/cross−appellant's brief to 09/27/2021 filed by Revival Chiropractic LLC. Motion is Unopposed. [9466852−1]* [21−10559] (ECF: Chad Barr) [Entered: 08/23/2021 03:56 PM]
06/24/2021		ORDER: Motion for extension to file appellee/cross−appellant brief filed by Appellee−Cross Appellant Revival Chiropractic LLC is GRANTED. [9409443−2], [9408283−2] Cross−Appellant's brief due on 08/26/2021. RSR (See attached order for complete text) [Entered: 06/24/2021 09:01 AM]
06/16/2021		Corrected Appendix filed [2 and 4 of 4 Volumes − 2 copies] by Attorney Peter J. Valeta for Appellants−Cross Appellees Allstate Insurance Company and Allstate Property & Casualty Insurance Company. Service: 06/16/2021 [Entered: 06/16/2021 02:21 PM]
06/16/2021		ORDER: Motion to correct appendix filed by Appellants−Cross Appellees Allstate Insurance Company and Allstate Property & Casualty Insurance Company is GRANTED by Supervisor. [9403119−2] [Entered: 06/16/2021 12:45 PM]
06/11/2021		*MOTION for extension of time to file appellee/cross−appellant's brief to 08/26/2021 filed by Revival Chiropractic LLC. Motion is Unopposed. [9409443−1]* [21−10559] (ECF: Chad Barr) [Entered: 06/11/2021 04:49 PM]
06/11/2021		Notice of deficient Motion for extension filed by Chad Andrew Barr for Revival Chiropractic LLC. Document does not contain a Certificate of Compliance, see FRAP 32(g)(1) Counsel must file a corrected motion using the Amend, Correct or Supplement Motion event within 3 days. [Entered: 06/11/2021 03:54 PM]
06/10/2021		*MOTION for extension of time to file appellee/cross−appellant's brief to 08/26/2021 filed by Revival Chiropractic LLC. Opposition to Motion is Unknown. [9408283−1]* [21−10559] (ECF: Chad Barr)

[Entered: 06/10/2021 05:27 PM]

06/09/2021 *Amended Motion [9403119−2] filed by Appellants−Cross Appellees Allstate Insurance Company and Allstate Property & Casualty Insurance Company.* [21−10559] (ECF: Peter Valeta) [Entered: 06/09/2021 05:37 PM]

06/08/2021 Notice of deficient Motion filed by Peter J. Valeta for Allstate Insurance Company and Allstate Property & Casualty Insurance Company. Corrected Appendix (Volume 2 and Volume 4) wasn't attached as exhibits to the Motion. Counsel must file a corrected motion using the Amend, Correct or Supplement Motion event within 3 days. [Entered: 06/08/2021 12:46 PM]

06/04/2021 *MOTION to correct appendix filed by Allstate Insurance Company and Allstate Property & Casualty Insurance Company. Motion is Unopposed. [9403119−1]* [21−10559] (ECF: Peter Valeta) [Entered: 06/04/2021 05:13 PM]

05/28/2021 Received paper copies of EAppendix filed by Appellants−Cross Appellees Allstate Insurance Company and Allstate Property & Casualty Insurance Company. 4 VOLUMES − 2 COPIES [Entered: 06/01/2021 10:15 AM]

05/28/2021 ORDER: The parties' joint motion to amend the jurisdictional allegations in the notice of removal and the underlying complaint in the action below is GRANTED... This appeal MAY PROCEED. The parties are directed to file notice of this order in the district court, along with a copy of this order, the newly amended notice of removal, and the amended complaint. [9353869−2], [9351583−2] JP and ALB (See attached order for complete text) [Entered: 05/28/2021 01:09 PM]

05/24/2021 Appendix filed [3 and 4 of 4 VOLUMES] by Appellants−Cross Appellees Allstate Insurance Company and Allstate Property & Casualty Insurance Company. [21−10559]−−[Edited 06/16/2021 by CRL, corrected Vol. 4 of 4 filed on 6/16] (ECF: Peter Valeta) [Entered: 05/24/2021 06:20 PM]

05/24/2021 Appendix filed [1 and 2 of 4 VOLUMES] by Appellants−Cross Appellees Allstate Insurance Company and Allstate Property & Casualty Insurance Company. [21−10559]−−[Edited 06/16/2021 by CRL, corrected Vol 2 of 4 filed on 6/16] (ECF: Peter Valeta) [Entered: 05/24/2021 06:08 PM]

05/21/2021 Received paper copies of EBrief filed by Appellants−Cross Appellees Allstate Insurance Company and Allstate Property & Casualty Insurance Company. [Entered: 05/24/2021 03:00 PM]

05/17/2021 Appellant−Cross Appellee's Brief filed by Appellants−Cross Appellees Allstate Insurance Company and Allstate Property & Casualty Insurance Company. [21−10559] (ECF: Peter Valeta) [Entered: 05/17/2021 03:03 PM]

04/29/2021 ORDER: The motion for extension of time to and including May 17, 2021 in which to file Appellants' brief is GRANTED, with the appendix due seven (7) days from the filing of the brief. [9366189−2] KCN (See attached order for complete text) [Entered: 04/29/2021 08:33 AM]

04/21/2021 *MOTION for extension of time to file appellant/cross−appellee's brief to 05/17/2021 filed by Allstate Insurance Company and Allstate Property & Casualty Insurance Company. Motion is Unopposed. [9366189−1]* [21−10559] (ECF: Peter Valeta) [Entered: 04/21/2021 05:34 PM]

04/07/2021 *Response to Jurisdictional Question with incorporated motion to adopt motions or responses filed by Appellants−Cross Appellees Allstate Insurance Company and Allstate Property & Casualty Insurance Company.* [21−10559] (ECF: Catherine Fitzpatrick) [Entered: 04/07/2021 05:22 PM]

04/05/2021 *Response to Jurisdictional Question with incorporated motion to adopt motions or responses filed by Appellee−Cross Appellant Revival Chiropractic LLC.* [21−10559] (ECF: Chad Barr) [Entered: 04/05/2021 05:16 PM]

04/05/2021 APPEARANCE of Counsel Form filed by Chad A. Barr, Esquire for the Appellee [21−10559] (ECF: Chad Barr) [Entered: 04/05/2021 04:53 PM]

03/29/2021		ORDER: Before the Court are "Allstate's Motion to Certify Question of Florida State Law to Florida Supreme Court and to Stay Briefing Schedule" and "Motion by Revival Chiropractic to Certify Question of Florida State Law to Florida Supreme Court and to Stay Briefing Schedule." The parties' motions to stay the appeal are DENIED. The parties' motions to certify a question to the Florida Supreme Court are CARRIED WITH THE CASE. A merits panel will address these motions after briefing. The initial brief is due 40 days after the date of this order, with the appendix due 7 days after the initial brief is filed. [9337923−3],[9335986−3];[9337923−2],[9335986−2] KCN (See attached order for complete text) [Entered: 03/29/2021 09:50 AM]
03/26/2021		Reply to response filed by Appellee−Cross Appellant Revival Chiropractic LLC. [21−10559] (ECF: Lawrence Kopelman) [Entered: 03/26/2021 11:54 AM]
03/23/2021		APPEARANCE of Counsel Form filed by Alyson Michelle Laderman for Revival Chiropractic LLC. [21−10559] (ECF: Alyson Laderman) [Entered: 03/23/2021 02:52 PM]
03/22/2021		RESPONSE to Motion to certify question filed by Appellee−Cross Appellant Revival Chiropractic LLC [9337923−2] filed by Attorney Catherine L. Fitzpatrick for Appellants−Cross Appellees Allstate Insurance Company and Allstate Property & Casualty Insurance Company. [21−10559] (ECF: Catherine Fitzpatrick) [Entered: 03/22/2021 11:32 PM]
03/22/2021		JURISDICTIONAL QUESTION issued as to Allstate Insurance Company, Allstate Property & Casualty Insurance Company and Revival Chiropractic LLC. [Entered: 03/22/2021 03:20 PM]
03/19/2021		*MOTION to certify question and to stay the briefing schedule filed by Revival Chiropractic LLC. Opposition to Motion is Unknown. [9337923−1]*−−[Edited 03/24/2021 by CRL] [21−10559] (ECF: Lawrence Kopelman) [Entered: 03/19/2021 01:34 PM]
03/17/2021		APPEARANCE of Counsel Form filed by Catherine L. Fitzpatrick for Appellant−Cross Appellee [21−10559] (ECF: Catherine Fitzpatrick) [Entered: 03/17/2021 07:12 PM]
03/17/2021		APPEARANCE of Counsel Form filed by Richard C. Godfrey for Appellant−Cross Appellee [21−10559] (ECF: Richard Godfrey) [Entered: 03/17/2021 07:10 PM]
03/17/2021		*MOTION to certify question and to stay the briefing schedule filed by Allstate Insurance Company and Allstate Property & Casualty Insurance Company. Motion is Opposed. [9335986−1]*−−[Edited 03/24/2021 by CRL, add additional relief] [21−10559] (ECF: Peter Valeta) [Entered: 03/17/2021 06:31 PM]
03/15/2021		Over the phone extension granted by clerk as to Attorney Peter J. Valeta for Appellants−Cross Appellees Allstate Insurance Company and Allstate Property & Casualty Insurance Company. Appellants brief due on 04/20/2021 as to Appellant−Cross Appellee Allstate Insurance Company, with the appendix due seven days from the filing of the brief. [Entered: 03/15/2021 12:27 PM]
03/11/2021		Corrected Briefing Notice issued to Appellants−Cross Appellees Allstate Insurance Company and Allstate Property & Casualty Insurance Company. The appellant's brief is due on or before 04/06/2021. The appendix is due no later than 7 days from the filing of the appellant's brief. [Entered: 03/11/2021 04:39 PM]
03/10/2021		Notice to Counsel of Record. **Counsel of Record must be logged in to CM/ECF and Pacer to access this document.** This is the only notice you will receive regarding this matter. Please print a copy for your file. [21−10559, 21−10629] [Entered: 03/10/2021 01:22 PM]
03/10/2021		Briefing Notice issued to Appellants−Cross Appellees Allstate Insurance Company and Allstate Property & Casualty Insurance Company.. [Entered: 03/10/2021 08:14 AM]
03/09/2021		TRANSCRIPT INFORMATION FORM SUBMITTED by Attorney Lawrence M. Kopelman for Appellee−Cross Appellant Revival Chiropractic LLC. No transcript is required for appeal purposes. [21−10559] (ECF: Lawrence Kopelman) [Entered: 03/09/2021 12:51 PM]

03/09/2021		Civil Appeal Statement filed by Attorney Lawrence M. Kopelman for Appellee−Cross Appellant Revival Chiropractic LLC. [21−10559] (ECF: Lawrence Kopelman) [Entered: 03/09/2021 12:50 PM]
03/09/2021		APPEARANCE of Counsel Form filed by Lawrence M. Kopelman for Revival Chiropractic LLC. [21−10559] (ECF: Lawrence Kopelman) [Entered: 03/09/2021 12:48 PM]
03/08/2021		Appellee's Certificate of Interested Persons and Corporate Disclosure Statement filed by Appellee−Cross Appellant Revival Chiropractic LLC. [Entered: 03/09/2021 10:35 AM]
03/05/2021		TRANSCRIPT INFORMATION FORM SUBMITTED by Attorney Peter J. Valeta for Appellants−Cross Appellees Allstate Insurance Company and Allstate Property & Casualty Insurance Company. No transcript is required for appeal purposes. [21−10559] (ECF: Peter Valeta) [Entered: 03/05/2021 04:39 PM]
03/05/2021		Civil Appeal Statement filed by Attorney Peter J. Valeta for Appellants−Cross Appellees Allstate Insurance Company and Allstate Property & Casualty Insurance Company. [21−10559] (ECF: Peter Valeta) [Entered: 03/05/2021 04:37 PM]
03/05/2021		Certificate of Interested Persons and Corporate Disclosure Statement filed by. On the same day the CIP is served, any filer represented by counsel must also complete the court's web−based stock ticker symbol certificate at the link here http://www.ca11.uscourts.gov/web−based−cip or on the court's website. See 11th Cir. R. 26.1−1(b). [21−10559] (ECF: Peter Valeta) [Entered: 03/05/2021 04:36 PM]
03/05/2021		APPEARANCE of Counsel Form filed by Peter J. Valeta for Allstate Insurance Company and Allstate Property & Casualty Insurance Company. [21−10559] (ECF: Peter Valeta) [Entered: 03/05/2021 04:34 PM]
02/26/2021		Appellate fee was paid on 02/25/2021 as to Appellee−Cross Appellant Revival Chiropractic LLC. [Entered: 02/26/2021 05:24 PM]
02/24/2021		CIVIL APPEAL DOCKETED. Notice of appeal filed by Appellee−Cross Appellant Revival Chiropractic LLC on 02/22/2021. Fee Status: Fee Paid. [Entered: 02/26/2021 05:19 PM]
02/23/2021		Appellate fee was paid on 02/18/2021 as to Appellant Allstate Insurance Company. [Entered: 02/23/2021 10:56 AM]
02/19/2021		CIVIL APPEAL DOCKETED. Notice of appeal filed by Appellants Allstate Insurance Company and Allstate Property & Casualty Insurance Company on 02/18/2021. Fee Status: Fee Paid. Awaiting Appellant's Certificate of Interested Persons due on or before 03/05/2021 as to Appellant Allstate Insurance Company. Awaiting Appellee's Certificate of Interested Persons due on or before 03/19/2021 as to Appellee Revival Chiropractic LLC [Entered: 02/23/2021 10:53 AM]

[DO NOT PUBLISH]

In the

United States Court of Appeals

For the Eleventh Circuit

No. 21-10559

REVIVAL CHIROPRACTIC LLC,
on behalf of Jazmine Padin,
on behalf of Natalie Rivera,

Plaintiff-Appellee-
Cross-Appellant,

versus

ALLSTATE INSURANCE COMPANY,
ALLSTATE PROPERTY AND CASUALTY INSURANCE COMPANY,

Defendants-Appellants-
Cross-Appellees.

Appeals from the United States District Court
for the Middle District of Florida
D.C. Docket No. 6:19-cv-00445-PGB-LRH

Before WILLIAM PRYOR, Chief Judge, ROSENBAUM, and BRASHER, Circuit Judges.

PER CURIAM:

This putative class action appeal turns on an important question about Florida's personal injury protection statute. Florida law requires an automotive insurance policy to pay 80% of all "reasonable expenses" for medical services. Fla. Stat. § 627.736(1)(a). If the insurer provides proper notice, it may limit payment to 80% of a schedule of maximum charges provided in the statute. *Id.* § 627.736(5)(a)1, (5)(a)5. The statute also provides that, if "a provider submits a charge for an amount less than the amount allowed under [the schedule of charges], the insurer may pay the amount of the charge submitted." Fla. Stat. § 627.736(5)(a)5.

The dispositive question in this appeal is whether an insurer that has given notice that it will limit payments according to the statutory schedule of maximum charges may nonetheless pay 80% of the charge submitted as a reasonable expense. This question allegedly affects thousands of Florida insurance policies. Two Florida intermediate appellate courts have answered it in the negative, but

the Supreme Court of Florida recently issued an opinion that calls their answer into substantial doubt. The upshot is that there are presently scores of lawsuits pending in the Florida state courts on this question, and they have led to different results.

Both parties in this appeal moved us to certify this question to the Supreme Court of Florida as the "ultimate expositor[ ]" of Florida law. *Mullaney v. Wilbur*, 421 U.S. 684, 691 (1975). After careful consideration and with the benefit of oral argument, we agree with the parties and certify the question to the Supreme Court of Florida.

BACKGROUND

Allstate Insurance Company issued two separate auto insurance policies to Natalie Rivera and Jazmine Padin. In those policies, Allstate gave notice that it would limit payments according to the statutory schedule in Section 627.736(5)(a)1: "Allstate will pay . . . eighty percent of reasonable expenses . . . . [T]he amount we will pay for such expenses shall . . . be limited to eighty percent of the . . . schedule of maximum charges . . . ." The policies also stated that, "[i]f a provider submits a charge for an amount less than the amount determined by the fee schedule . . . we will pay eighty percent of the charge that was submitted."

Padin and Rivera were both involved in car accidents, and they sought treatment from Revival. They also assigned to Revival any rights and benefits that they had under their respective policies.

After rendering services to these insureds, Revival submitted a charge of $100. The services corresponded to a maximum charge of $149.92 under the statutory schedule. So 80% of the maximum charge under the schedule was $119.94, which was higher than the submitted charge. *See* Fla. Stat. § 627.736(5)(a)1. Because the charge of $100 was less than $119.94, the statute expressly allowed Allstate to pay the amount billed. *Id.* § 627.736(5)(a)5. Instead of paying the scheduled amount or amount billed, Allstate chose to pay 80% of the amount billed—$80.

Revival also submitted a charge of $75 for a service corresponding to a maximum charge of $81.70 under the schedule. Again, instead of paying 80% of the maximum charge under the schedule ($65.36) or the amount billed ($75), Allstate paid 80% of the amount billed ($60).

Neither Padin nor Rivera paid the remaining 20% of the charges submitted to Allstate.

Revival filed a putative class action against Allstate in Florida state court, seeking a judgment "[d]eclaring that [Allstate] violated Florida law by paying only 80% of the charges submitted where the charges submitted were for less than the amounts allowed" under Section 627.736(5)(a)1.

Allstate removed the case to the Middle District of Florida, and both parties moved for summary judgment. In its motion, Allstate argued that it complied with its own policies by paying 80% of the amounts billed, and that those policies conformed to the

statute. It argued that Section 627.736(1)(a) sets forth an "overarching requirement" that insurers must pay only 80% of reasonable medical expenses. It also argued that Section 627.736(5)(a)5's provision that an "insurer may pay the amount of the charge submitted" is permissive—not mandatory—in nature. So it asserted that it was not obligated to pay the full amount billed under the statute.

For its part, Revival argued that Section 627.736(5)(a)1 provides a distinct method for insurers to satisfy the 80% payment requirement by limiting payments according to the statutory schedule. And it argued that, because Allstate provided notice of its intent to use that schedule, it "must adhere to that payment methodology." It further argued that, when a provider submits a charge that is less than the amount allowed under the schedule, an insurer using the schedule has only two options: to pay 80% of the schedule or to pay the total amount billed. So, Revival argued, Allstate's policies conflicted with Florida law because they allowed it to pay only 80% of the amount billed

The district court granted summary judgment to Revival and denied it to Allstate. It agreed with Revival that, "when the Schedule is elected through proper notice and a provider submits a Lesser Charge, the PIP statute only provides the insurer with two options for payment." That is, it "may pay 80 percent of the amount allowed under the Schedule, or if it is less, the full amount of the charge submitted."

Allstate appealed.[1] Both parties later moved to certify the substantive question interpreting the statute to the Supreme Court of Florida.

DISCUSSION

This Court "should certify questions to the state supreme court when [it has] substantial doubt regarding the status of state law." *Whiteside v. GEICO Indem. Co.*, 977 F.3d 1014, 1018 (11th Cir. 2020) (quoting *Peoples Gas Sys. v. Posen Constr., Inc.*, 931 F.3d 1337, 1340 (11th Cir. 2019)). Doing so helps "to avoid making unnecessary *Erie* 'guesses' and . . . offer[s] the state court the opportunity to interpret or change existing law." *Id.* (quoting *CSX Transp., Inc. v. City of Garden City*, 325 F.3d 1236, 1239 (11th Cir. 2003)). For its part, the Supreme Court of Florida accepts certification of determinative questions under Florida law when "there are no clear controlling precedents" on the matter. Fla. Stat. § 25.031.

Here, we face a situation where there are no clear controlling precedents from the Supreme Court of Florida on a dispositive issue of Florida law. Two Florida appellate courts have held that, when an insurer gives notice that it will reimburse according to the scheduled rates, it must either pay 80% of the applicable fee schedule or 100% of the bill. *Hands On Chiropractic PL a/a/o Justin*

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[1] Revival cross-appealed the denial of its motion for class certification. We will address that procedural issue, if necessary, after the Supreme Court of Florida answers the dispositive substantive question of whether Allstate's payments were lawful.

Wick v. GEICO Gen. Ins. Co., 327 So. 3d 439, 441–44 (Fla. Dist. Ct. App. 2021); *Geico Indem. Co. v. Muransky Chiropractic P.A.*, 323 So. 3d 742, 744 (Fla. Dist. Ct. App. 2021). That is, these courts have held that the statute creates a floor that an insurance company cannot go below: the lower of 80% of the schedule or 100% of the charge. But a recent decision from the Supreme Court of Florida calls those authorities into question; it reasons that the statute creates a ceiling, not a floor, on an insurer's obligations.

We begin with the Florida intermediate appellate courts. In *Geico Indemnity Co. v. Muransky Chiropractic P.A.,* as here, a provider billed an insurer for an amount less than 80% of the schedule of maximum charges, but the insurer paid only 80% of the amount billed. 323 So. 3d at 744. The Fourth District Court of Appeal rejected the insurer's argument that Section 627.736 mandates 20% coinsurance for all charges billed. *Id.* at 747. It instead held that, "if the billed amounts are less than 80% of the fee schedule, the insurer may pay the billed amounts in full or pay the 80% reimbursement rate of maximum charges." *Id.* We note that, in reaching this conclusion, the court cited favorably to the district court's decision in this case. *Id.*

The Fifth District Court of Appeal held similarly in *Hands on Chiropractic PL a/a/o Justin Wick v. GEICO Gen. Ins. Co.* Again, the insurer in that case paid only 80% of the amount billed, even though it had chosen to limit reimbursements according to the scheduled rates. 327 So. 3d at 441–42. The court held that this payment violated the statute. *Id.* at 442–43. It explained that, when

an insurer chooses to reimburse according to the scheduled rates, "[i]t must either pay the amount allowed based on the applicable fee schedule . . . or, if the billed amount is less than the amount allowed, it is to be paid in full. . . . [T]he statute does not permit the insurer to then discount that billed amount further." *Id.* at 443–44.

If we were limited to these precedents from the Fourth and Fifth District Courts of Appeal, Florida law would not be in substantial doubt. *See Molinos Valle Del Cibao, C. por A. v. Lama*, 633 F.3d 1330, 1348 (11th Cir. 2011). But the Supreme Court of Florida recently undermined—but did not directly repudiate—their reasoning in *MRI Associates of Tampa, Inc. v. State Farm Mutual Automobile Insurance Co.*, 334 So. 3d 577 (Fla. 2021). There, the Supreme Court of Florida held that an insurer could simultaneously use the "reasonable charge" method for calculating reimbursements and also elect the "schedule of maximum charges" limitation. *Id.* at 583–585. As in this case, the insurance policy in *MRI Associates* said that the insurer would "limit payment . . . to 80% of a . . . reasonable charge, but in no event [would it] pay more than 80% of the . . . 'schedule of maximum charges.'" *Id.* at 581 (emphasis omitted). The Supreme Court of Florida held that the insurer's policy conformed to Section 627.736. *Id.* at 585. It reasoned "that reimbursement limitations based on the schedule of maximum charges [must] be understood . . . simply as an optional method of capping reimbursements rather than an exclusive method for determining reimbursement rates." *Id.* at 584–85 (emphasis omitted).

Put differently, the Supreme Court of Florida explained that the schedule "establishes a ceiling but not a floor." *Id.* at 585.

As of this writing, none of Florida's intermediate appellate courts have conclusively addressed the tension between *MRI Associates* and *Muransky*/ *Wick*. The Third District Court of Appeal has noted the possibility that *MRI Associates* abrogated the Fifth District Court of Appeal's precedent. *See Progressive Am. Ins. Co. v. Columna Inc.*, --- So. 3d ----, No. 3D21-286, 2022 WL 852297, at *1 (Fla. Dist. Ct. App. Mar. 23, 2022)(reversing and remanding summary judgment). But the Fifth District Court of Appeal has continued following its holding from *Wick* without reference to *MRI Associates*. *See Geico Indem. Co. v. Affinity Healthcare Ctr. at Waterford Lakes, PL*, --- So. 3d ----, No. 5D21-184, 2022 WL 879277, at *1 (Fla. Dist. Ct. App. Mar. 25, 2022). For their part, state trial courts have reached different conclusions about the issue with some following the on-point opinions in the intermediate appellate courts and others following the reasoning of *MRI Associates*.

CONCLUSION

Considering this substantial uncertainty, principles of federalism and comity counsel us not to attempt to divine the answer to this challenging question ourselves. *See In re Cassell*, 688 F.3d 1291, 1300 (11th Cir. 2012). Accordingly, we certify the following question to the Supreme Court of Florida:

> When a personal injury protection insurance policy provides notice that it will limit payment pursuant to the statutory schedule of maximum charges, may an

> insurer pay 80% of the charge submitted, even when the charge submitted is less than 80% of the statutory schedule of maximum charges?

Of course, our statement of the question certified does not "limit the inquiry" of the Supreme Court of Florida or restrict its consideration of the issues that it perceives are raised by the record certified in this case. *Cassell*, 688 F.3d at 1301 (internal quotation marks omitted). The entire record on appeal in this case, including copies of the parties' briefs, is transmitted along with this certification.

QUESTION CERTIFIED.

UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

ELBERT PARR TUTTLE COURT OF APPEALS BUILDING
56 Forsyth Street, N.W.
Atlanta, Georgia 30303

David J. Smith
Clerk of Court

For rules and forms visit
www.ca11.uscourts.gov

June 02, 2022

John A. Tomasino - Clerk Supreme Court of Florida
500 South Duval Street
Tallahassee, Florida 32399-1925

Appeal Number: 21-10559-CC
Case Style: Revival Chiropractic LLC v. Allstate Insurance Company, et al
District Court Docket No: 6:19-cv-00445-PGB-LRH

Dear Clerk,

Enclosed is the Court's certified question issued June 2, 2022.

Sincerely,

DAVID J. SMITH, Clerk of Court

Reply to: Djuanna H. Clark
Phone #: 404-335-6151

OPIN-7 Ltr to State Court Certif Ques

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May 26, 2022

VIA EFILING
David J. Smith, Clerk of Court
U.S. Court of Appeals for the 11th Circuit
56 Forsyth St., N.W.
Atlanta, Georgia 30303

RE: *Allstate v. Revival*, No. 21-10559

Dear Clerk:

Pursuant to Rule 28(j) and 11th Cir. Rule 28 IOP (6), Appellee/Cross-Appellant Revival Chiropractic, LLC ("Revival") hereby submits the following Notice of Supplemental Authority.

- ***Witherell Chiropractic Center a/a/o Tacarra Stubbs v. United Automobile Ins. Co.*., No. 20-006708 COSO (Fla. Broward County, February 10, 2022) (order attached hereto)**

This county court order was entered after the Florida Supreme Court's decision in *MRI Assocs. of Tampa, Inc. v. State Farm Mut. Auto. Ins. Co.*, No. SC18-1390, 2021 WL 5832298 (Fla. December 9, 2021) was issued, and correctly and uniformly follows the holdings of *GEICO Indemnity Company v. Accident & Injury Clinic, Inc. a/a/o Frank lrizarry*, 290 So. 3d 980 (Fla. 5th DCA 2019) ("*Irizarry*"), *GEICO Indemnity Company v. Muransky Chiro., P.A., a/a/o Carlos Dieste*, 323 So. 3d 742 (Fla. 4th DCA 2021) ("*Muransky*"), and *Hands On Chiropractic PL a/a/o Justin Wick v. GEICO General Ins. Co*., Case No. 5D20-2705 (Fla. 5th DCA September 10, 2021) ("*Wick*"). These court orders all pertain to the arguments raised in Revival's Answer Brief regarding the inapplicability of the Second District's ruling in *State Farm Mut. Auto. Ins. Co. v. MRI Assoc. of Tampa, Inc*., 252 So. 3d 773, 778 (Fla. Dist. Ct. App. 2018) *of Tampa, Inc.* to the issue at hand found in footnote 9 of the Answer Brief. The Florida Supreme Court in *MRI Assocs.* was tasked with interpreting the language of State Farm's policy. In the case before this Court, the parties have stipulated that Allstate calculated reimbursements pursuant to the Schedule of

Maximum Charges. These court orders also pertain to the argument that, notwithstanding *MRI Assocs.*, this Court is still required to follow *Irizarry*, *Muransky*, and *Wick* which rulings were not overruled by *MRI Assocs.* found in pages 16-24, and 24-44 of the Answer Brief.

Respectfully Submitted,

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30 Fla. L. Weekly Supp. 48b

Online Reference: FLWSUPP 3001STUB

Insurance -- Personal injury protection -- Coverage -- Medical expenses -- Where charges submitted were greater than 80% of 200% of allowable amount under Medicare fee schedule, but less than 200% of allowable amount under fee schedule, insurer that adopted statutory fee schedule was required to pay 80% of 200% of fee schedule amount, not 80% of billed amount -- Finding that treatment was related and necessary is only reasonable inference that can be drawn from fact that insurer claims to have reimbursed bills in accordance with policy that only permits payment when treatment is related and necessary -- Reasonableness of charges is not issue where policy adopts fee schedule -- Deductible -- Insurer improperly applied deductible after reducing bills through application of fee schedule rather than applying deductible to 100% of billed expenses

WITHERELL CHIROPRACTIC CENTER, a/a/o Tacarra Stubbs, Plaintiff, v. UNITED AUTOMOBILE INSURANCE COMPANY, Defendant. County Court, 17th Judicial Circuit in and for Broward County. Case No. 20-006708 COSO (60). February 10, 2022. Allison Gilman, Judge. Counsel: Vincent Rutigliano, Rosenberg & Rosenberg, P.A., Hollywood, for Plaintiff. Sean Sweeney, for Defendant.

ORDER ON

1) Plaintiff's Motion for Partial Summary Judgment

2) Plaintiff's Motion for Summary

Judgment as to the Application of Deductible.

3) Plaintiff's Motion for Entitlement for Attorneys Fees and

Costs Pursuant to 57.105 with Respect to Defendant's

Affirmative Defense of Exhaustion.

4) Defendant's Motion for Summary Judgment

and Request for 57.105 Sanctions.

1) Plaintiff's Motion for Partial Summary Judgment

This cause having come before the Court on Plaintiff's Motion for Summary Judgement regarding the reimbursement of CPT 98941, 97112 and 97110 which was filed on March 31, 2021. The motion addressed the issue presented in the declaratory count (Count II) in Plaintiff's Statement of Claim which asks the Court to determine if Florida Statute 627.736 permits the Defendant to remit payment for services billed below 200% of the applicable Medicare Part B fee schedule at 80% of the billed amount or if the Defendant is required to remit payment based upon 80% of 200% of the applicable Medicare Part B fee schedule and if the Court grants same then to the amount due and owing, the Court having heard argument of the parties and being otherwise advised in the premises it is hereby ORDERED AND ADJUDGED that Plaintiff's Motion for Summary Judgment is granted for the reasons set forth below.

The Plaintiff billed, in part, for CPT 98941, 97112 and 97110 from May 11, 2015-December 14, 2015. The amount charged for each code was greater than 80% of 200% of the Medicare Part B physician's fee schedule but less than 200% of the Medicare Part B participating physician's fee schedule. The Defendant remitted payment for said services at 80% of the billed amount.

The Defendant contends that their policy specifically elected the schedule of maximum charges as provided in Florida Statute 627.736(5)(a)1. The Plaintiff does not contest the Defendant's position that the at-issue policy elected the schedule of maximum charges as provided in Florida Statute 627.736(5)(a)1 for paying related and necessary bills.

The issue presented in the declaratory count (Count II) is whether Florida Statute 627.736 requires the Defendant to remit payment for charges that are less than 200% of the applicable Medicare Part B physician's fee schedule at 80% of 200% of the applicable Medicare Part B physician's fee schedule as a result of the Defendant's adoption of the fee schedule set forth in Florida Statute 627.736 or whether the Defendant is able to remit payment based upon 80% of the billed amount.

The Court finds that the fee schedule adopted by the Defendant into their policy does not permit an insurer to remit payment based upon 80% of the billed amount under the instant set of facts. The Court finds that said fee schedule compels an insurer, who has adopted same, to remit payment for amounts charged that are greater than 80% of 200% of the Medicare Part B physician's fee schedule but less than 200% of the Medicare Part B participating physician's fee schedule at 80% of 200% of the Medicare Part B participating physician's fee schedule. See *Geico Ind. Co. v. Accident & Injury Clinic a/a/o Frank Irizarry,* 290 So.3d 980 (Fla. 5th DCA 2019) [44 Fla. L. Weekly D3045b] and *Geico Indemnity Company v. Muransky Chiropractic a/a/o Carlos Dieste,* 4D21-457, 2021 WL 2584107, (Fla. 4th DCA 2021) [46 Fla. L. Weekly D1513a]. The *Irizarry* court in answering the certified question "Does the plain language of the PIP statute preclude an insurer from limiting its reimbursement to 80% of the total billed amount when the amount billed is less than the statutory fee schedule?" held that "as for payment of the charges, the statute authorizes insurers to limit reimbursement to 80% of an amount fixed through a fee schedule, see 627.736(5)(a)1.a-f" and that "80% of the fee schedule" is "the required amount an insurer must pay" if the insurer elected the fee schedule method. *Id*. The Fifth District held that the only exception is when a provider's charge is less than 80% of 200% of the Medicare Part B participating physician's fee schedule amount and in such a case an insurer would have the option of paying 80% of 200% of the Medicare Part B participating physician's fee schedule or 100% of the billed amount. *Id*. The Fourth District Court of Appeals in *Muransky* cited the *Irizarry* opinion with approval and held that "80% of the fee schedule [is] (the required amount an insurer must pay)." *Id*.

MRI Associates of Tampa, Inc. v. State Farm, 2021 WL 5832298, is not applicable. The Defendant's policy does not contain the same language as the State Farm policy. In addition, the Defendant, in this case, has taken a position that the fee schedule set forth in Florida Statute 627.736 governs the reimbursement of related and necessary services. Defendant's first affirmative defense, numerous answers to different interrogatories all assert that "the Defendant states that the subject policy and contract of insurance in this case properly elected the Medicare Fee Schedule methodology for reimbursements." See also Defendant's Motion for Summary Judgment where they assert in their Preliminary Statement "The insured's personal automobile insurance contract with United Auto specifically provides that United Auto will limit reimbursement under the personal injury protection section of the insurance policy to eighty percent of the schedule of maximum charges provided for under F.S. §627.736(5)(a)(1)(2013). United Auto reimbursed the Plaintiff accordingly . . . " In addition, the explanations of benefits for the subject codes reference X3043 which state that "the allowed amount for this procedure is based upon 200% of the Participating Level of Medicare Part B fee schedule for the region in which the services were rendered. (Reference: CMS Physician Fee Schedule File)." Lastly, and even the affidavit filed by Defendant of Lilian Menendez claims payment should be made pursuant to the foregoing fee schedule. The Defendant in this case, at no point, has ever asserted that payment should be made or even that their policy permits them to issue payment based upon 80% of a reasonable amount.

For the reasons set forth herein, Plaintiff's Motion for Summary Judgment as to the declaratory count is granted. The Court finds that the Defendant, having adopted the fee schedule set forth in Florida Statute 627.736, is required to remit payment for charges that are greater than 80% of 200% of the applicable Medicare Part B participating physician's fee schedule but also less than 200% of the applicable Medicare Part B participating physician's fee schedule at 80% of 200% of the applicable Medicare Part B physician's fee schedule and that paying 80% of the billed amount is an improper underpayment.

Having found in favor of the Plaintiff on the declaratory count the Court addresses the breach of contract claim and further finds that the subject treatment is related and necessary. The Defendant claims to have processed and reimbursed the Plaintiff for the subject bills in accordance with the subject policy and Florida Statute 627.736 (See their first and second affirmative defenses, explanations of benefits and PIP log) and in response to Plaintiff's interrogatory #10 which asked the Defendant to provide their position on the relatedness and necessity of the subject treatment the Defendant referred the Plaintiff to Defendant's explanations of benefits and PIP log. Because the Defendant's policy and Florida Statute 627.736 only permit payment of PIP benefits when the service is related and necessary the only reasonable inference that can be drawn is that the subject treatment was related and necessary. The Defendant did not offer anything to rebut or dispute the relatedness and necessity of the subject treatment. The Plaintiff also filed the affidavit of Charles Witherell, DC which asserts that the treatment was related and necessary. Based on the evidence that was presented a reasonable jury would not return a verdict for the Defendant finding that the treatment was not related and / or not necessary.

Reasonableness is not an issue as the policy adopts the fee schedule and based on the policy all of the at-issue treatment should be paid based upon 80% of 200% of the Medicare Part B participating physician's fee schedule. The Court takes judicial notice of the print outs from CMS.gov, as attached to Plaintiff's Motion for Summary Judgment, which provide the Medicare Part B participating physician's fee schedule amounts for CPT 98941, 97112 and 97110. After plugging in said amounts to the reimbursement formula (80% of 200% of the Medicare Part B participating physician's fee schedule) and then subtracting the amount previously paid the Court finds that the Defendant owes an additional $203.94 plus interest.

2) Plaintiff's Motion for Summary

Judgment as to the Application of Deductible.

The Court finds that the Defendant reduced Plaintiff's bills in accordance with the adopted fee schedule before applying the deductible. The Defendant did not properly apply the deductible. As the Florida Supreme Court stated in *Progressive Select Insurance Company v. Florida Hospital Medical Center,* 260 So.3d 219 (Fla. 2018) [44 Fla. L. Weekly S59a] the deductible must be applied to 100% of the billed expenses:

> A plain reading of the statutory provisions makes clear that the deductible must be subtracted from the provider's charges before the reimbursement limitation is applied. In the context of section 627.736(1), “expenses and losses” refers to something different from “benefits.” “Benefits” are the amount paid by the insurer -- determined by the 60% and 80% methodologies, and governed by the fee schedule, when applicable. “Expenses and losses,” on the other hand, refers to the total charges submitted to the insured -- not only those which may be recovered as benefits. And section 627.739(2) provides that the deductible must be applied to 100% of such “expenses and losses.” Subtracting the deductible from the reduced fee schedule amount would violate this requirement.

Based on the Florida Supreme Court's holding the deductible should be applied to G0283 $45.00; 97535 $60.00; 72052 $300.00; 72100 $180.00; 72070 $180.00; and $235.00 of the ($400.00 billed for) 99204 on 5/11/15. The remainder of 99204 - $165.00 (since it is less than 80% of 200% of the applicable Medicare Part B physician's fee schedule ($251.97)) should be paid in the full amount billed and all other codes that the Defendant applied to the deductible (98941 and 97010 on May 11, 2015; 98941, 97124, 97010, G0283 on May 13, 2015 and $ .90 of the $80.00 billed for 98941 on May 18, 2015) should be paid based upon the permissible fee schedule set forth in the policy and as noted in the covered amount section of the explanations of benefits. When the deductible is properly applied the Defendant owes an additional $365.26 in benefits for the codes that the Defendant improperly applied to the deductible.

The Court did not take testimony or evidence on the 57.105 motions filed for fees and Costs, as such the Court does not make a finding at this time on those pending motions.

The Plaintiff is directed to submit a proposed Final Judgment consistent with this ruling.

* * *

COZEN O'CONNOR

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May 24, 2022

VIA EFILING

David J. Smith, Clerk of Court
U.S. Court of Appeals for the 11th Circuit
56 Forsyth St., N.W.
Atlanta, Georgia 30303

Re: *Allstate v. Revival*, Case No. 21-10559

Dear Clerk:

Pursuant to FRAP 28(j) and 11th Circuit Rule 28 IOP (6), Appellants-Cross-Appellees Allstate Insurance Company and Allstate Fire & Casualty Insurance Company ("Allstate") submit the following Fourth Notice of Supplemental Authority.

- ***Miami Med. Group, Inc. v. Auto Club Ins. Co. of Fla.*, Case No. 2020-006731-SP-26, County Court, Miami-Dade County, Florida (May 19, 2022) (copy attached).**

This decision pertains to Allstate's arguments at pages 20-22, 30-33 (in particular fn. 11), and 41-42 of Allstate's Initial Brief, and pages 7-19 of Appellants and Cross-Appellee Response and Reply Brief ("Allstate's Answer/Reply Brief") regarding Allstate's obligation under the Florida PIP Statute (Fla. Stat., §627.736) to only pay 80% of reasonable medical expenses under the mandatory PIP coverage when the amount billed by a medical provider is less than the schedule of maximum charges authorized by §627.736(5)(a)(1). In addition, this new decision also follows the Florida Supreme Court's decision in *MRI Assocs. of Tampa, Inc. v. State Farm Mut. Auto. Ins. Co.*, 334 So.3d 577 (Fla. 2021), and is relevant to pages 1-3 of Allstate's Answer/Reply Brief regarding certification to the Florida Supreme Court.

The decisions explains how the Florida Supreme Court's *MRI Assocs.* decision controls on the issue of whether the insurer had to pay 80% of the PIP statutory fee schedule amount rather than pay 80% of the billed amount. Finally, this new decision explains how *GEICO Indemnity Company v. Accident & Injury Clinic, Inc. a/a/o Frank Irizarry*, 290 So. 3d 980 (Fla. 5th DCA 2019) and *Hands on Chiropractic PL a/a/o Justin Wick v. GEICO General Ins. Co.* Case No 5D20-2705 (Fla. 5th DCA September 10, 2021), are inapplicable based on GEICO's policy language. This is now the fourth decision of Supplemental Authority filed by Allstate since *MRI Associates* was decided last December in which a lower Florida court has followed *MRI Associates* and/or declined to follow cases like *Wick* or *Irizarry*. *See*, *e.g.,* Allstate Supplemental Authority filings of January 11, 2022, and March 16, 2022.

Respectfully submitted,

By: /s/ Peter J. Valeta
Peter J. Valeta

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Attorneys for Appellants and Cross-Appellees, Allstate Insurance Company and Allstate Fire & Casualty Insurance Company

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 24th day of May, 2022, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF. I also certify that the foregoing document is being served this day on all counsel of record identified on the attached Service List in the manner specified, either via transmission of Notices of Electronic Filing generated by CM/ECF or in some other authorized manner for those counsel or parties who are not authorized to electronically receive Notices of Electronic Filing.

/s/ Peter J. Valeta
Peter J. Valeta, Esq.

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

CASE NO: 2020-006731-SP-26
SECTION: SD05
JUDGE: Michaelle Gonzalez-Paulson

MIAMI MEDICAL GROUP, INC.

Plaintiff(s) / Petitioner(s)

vs.

AUTO CLUB INSURANCE COMPANY OF FLORIDA

Defendant(s) / Respondent(s)

_____/

ORDER ON PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT AS TO THE APPLICATION OF THE STATUTORY BILLED AMOUNT AND DEFENDANT'S CROSS MOTION FOR FINAL SUMMARY JUDGMENT

THIS CAUSE having come on to be heard on May 9, 2022, regarding the Plaintiff's Motion for Partial Summary Judgment and Defendant's Cross Motion for same, and the Court having considered same, and being otherwise advised, the court hereby GRANTS the Defendant's Cross Motion for Partial Summary Judgment and DENIES the Plaintiff's Partial Motion for Summary Judgment:

ORDERED AND ADJUDGED

as follows:

1. Plaintiff brought this Personal Injury Protection ("PIP") action against the Defendant for purportedly underpaid PIP benefits.
2. At the hearing on May 9, 2022, as well as in its Motion, the Plaintiff admitted that the Defendant's policy properly incorporated the Schedule of Maximum charges set forth in 627.736(5)(a)1-5 (2019).

3. It is undisputed that this case involves a claim for Florida No-Fault ("PIP") benefits arising from a motor vehicle accident on May 22, 2019, involving Maria Magdalena Linares. Further, it is undisputed that the insured's policy provided $10,000 in PIP benefits subject to the terms and conditions of the insurance policy and Fla. Stat. §627.736. Moreover, there is no Med Pay coverage and the Defendant filed a certified copy of the policy and declarations page reflecting same.

4. Plaintiff submitted CPT Code 99213 in the amount of $160.00 for two dates of service. The Defendant approved this amount and paid 80% of same or $128.00. Plaintiff contends that Plaintiff's charges for CPT code 99213 should have been paid at 80% of 200% of the Medicare Part B Fee schedule rather than 80% of the amount that the Plaintiff billed for this CPT code. Thus the Plaintiff argues that the insurer should have paid $128.59 for this CPT code or a difference of .59 cents.

5. According to the binding case and statutory law, this Court agrees with the Defendant, that payment at 80% of the billed and submitted amount was the proper payment from the Defendant.

6. A plain reading of the Auto Club Insurance Company of Florida policy makes it abundantly clear that Auto Club will only pay 80% of "a properly billed reasonable charge" but the policy also states in no event will Auto Club pay more than 80% of the schedule of maximum charges.

7. The Florida Supreme Court stated that by its very nature, a limitation based on a schedule of maximum charges establishes a ceiling but not a floor. As a result, the Florida Supreme court determined that Fla. Stat. §627.736 (2019) does not preclude and insurer from using the separate statutory factors for determining the reasonableness of charges. *MRI Associates of Tampa, Inc. v. State Farm Mutual Automobile Insurance Company*, 334 So. 3d 577 , 46 Fla. L. Weekly S 379 (Fla. December 9, 2021).

8. The notice provision providing that "an insurer may limit payment" if the policy contains notice that "the insurer *may* limit payment pursuant to the schedule of charges" cannot be reconciled with the argument that an election to use the limitations of the schedule of maximum charges precludes an insurer's reliance on the other statutory factors for determining the reasonableness of reimbursements. The permissive nature of the statutory notice language does not in any way signal that the insurer will be so constrained by such an election. On the contrary, the language signals that the insurer is given an option that may be used in addition to other options that are authorized. *Id* at 17.

9. In Fla. Stat. §627.736(1)(a), the Legislature stated that PIP medical benefits must cover "[e]ighty percent of all reasonable expenses for medically necessary medical, surgical, X-ray, dental, and rehabilitative services.

10. Fla. Stat. §627.736(5)(a)(5) states that the No-Fault Act prohibits medical providers from billing an insured or insurance company more than a “reasonable charge,” which the Act delineates according to both a fact-dependent inquiry and the schedule of maximum charges. Where the provider charges less than the scheduled maximum, the No-Fault Act neither excuses such charge from being otherwise reasonable, nor precludes an insurer from reimbursing 80% of the billed amount as a reasonable charge.

11. If a medical provider is prohibited by Fla. Stat. §627.736(5)(a)(5) from charging the insured or insurer more than a “reasonable charge” then an insurer is never statutorily obligated to pay more than 80% of the billed amount. Any other interpretation would be irreconcilable with Fla. Stat. §627.736 and Section (1)(a) and Section (5)(a).

12. The notice language echoes the underlying authorization to limit reimbursements under the schedule of maximum charges: "The insurer *may limit* reimbursement to 80 percent of the schedule of maximum charges." Given the full context of these provisions, a reasonable reading of the statutory text requires that reimbursement limitations based on the schedule of

maximum charges be understood simply as an optional method of capping reimbursements rather than an exclusive method for determining reimbursement rates. By its very nature, a limitation based on a schedule of maximum charges establishes a ceiling but not a floor. *Id* at 17.

13. Moreover, the Auto Club policy provides clear and unambiguous notice that it will only pay 80% of a properly billed reasonable charge. Accordingly, when the Plaintiff billed CPT code 99213 and Auto Club limited the reimbursement at 80% of the Plaintiff "reasonable charge" or billed amount, it did so in compliance with the plain language of the No-Fault Act.

14. In support for its argument the Plaintiff relies on a plethora of decisions regarding the GEICO policy. Specifically, *GEICO Indemnity Company v. Accident & Injury Clinic, Inc. a/a/o Frank Irizarry*, 290 So. 3d 980 (Fla. 5th DCA 2019) and more recently, *Hands on Chiropractic PL a/a/o Justin Wick v. GEICO General Ins*. Co. Case No 5D20-2705 (Fla 5th DCA September 10, 2021). In each of the GEICO cases, GEICO paid 80% of the charges, which were billed at less than 200 percent of the Medicare Part B Fee Schedules. The medial providers argued that GEICO was required to pay 100% of any charges that were billed at less than 200% of the applicable Medicare Fee Schedule. The GEICO policy contains specific wording regarding bills submitted for less than the fee schedule. Specifically, the policy stated: "A charge submitted by a provider, for an amount less than the allowed amount above, ***shall*** be paid in the amount of the charge submitted."

15. The Auto Club policy does not contain any such wording and again specifically states that Auto Club will only pay 80% of "a properly billed reasonable charge" but the policy also states in no event will Auto Club pay more than 80% of the schedule of maximum charges.

16. GEICOs policy changed the permissive wording in the statute from "the insurer **may** pay" to the mandatory wording of "a provider … **shall** be paid," no such wording exists in the Auto Club policy of insurance.

17. The Defendant paid 80% of the amount submitted by the Plaintiff for CPY Code 99213. The amount submitted for his code was $160 and the insurer allowed this amount and paid 80% or $128.00. Plaintiff argued that the Defendant should have paid .59 cents more than the amount paid by the Defendant.

18. Defendant further argued that pursuant to *Precision Diagnostic, Inc. v. Progressive American Insurance, Co*., 330 So.3d 32 (Fla. 4th DCA 2021), no benefits should be awarded based upon the legal maxim "de minimis non curat lex".

19. The amount of .59 cents sought by the Plaintiff in the Motion for Partial Summary Judgment for CPT code 99213 is the first time the amount has been put forth by the Plaintiff for this CPT Code. The demand letter and subsequent Complaint, Amended Complaint and Second Amended Complaint all fail to identify this amount as the amount at issue for this CPT Code.

20. The Plaintiff's Partial Motion for Summary Judgment is the first notice provided by the Plaintiff that it specifically sought to recover .59 cents for CPT code 99213.

21. Plaintiff's demand letter does not state with specificity that it is seeking this amount for this CPT Code; rather there is a blanket, generic statement that the insurer owes $8,300.88, the ledger attached to the demand letter only provides that $160.00 was billed and does not indicate the amount sought by the Plaintiff for this or any other CPT code.

22. Therefore, the court is not persuaded by the argument that the Defendant should have included an affirmative defense of de minimis non curat lex when the amount at issue was not properly provided to the insurer in the pre-suit demand letter in compliance with Fla. Stat. 627.736(10).

23. The court finds that the Defendant's payment of $128.00 representing 80% of the amount submitted and billed by the Plaintiff as a reasonable charge was proper.

24. The Court further finds that Plaintiff did not provide any other persuasive argument as to why the $0.59 owed was not "a trifling amount" and therefore was "de minimus."

25. Therefore, it is ORDERED:

    a. Plaintiff's Motion for Partial Summary Judgment is DENIED.

    b. Defendant's Cross Motion for Partial Summary Judgment is GRANTED.

DONE and **ORDERED** in Chambers at Miami-Dade County, Florida on this 19th day of May, 2022.

2020-006731-SP-26 05-19-2022 5:11 PM
Hon. Michaelle Gonzalez-Paulson

COUNTY COURT JUDGE
Electronically Signed

No Further Judicial Action Required on **THIS MOTION**

CLERK TO **RECLOSE** CASE IF POST JUDGMENT

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March 31, 2022

VIA EFILING

David J. Smith, Clerk of Court
U.S. Court of Appeals for the 11th Circuit
56 Forsyth St., N.W.
Atlanta, Georgia 30303

Re: *Allstate v. Revival*, Case No. 21-10559

Dear Clerk:

Pursuant to FRAP 28(j) and 11th Circuit Rule 28 IOP (6), Appellants-Cross-Appellees Allstate Insurance Company and Allstate Fire & Casualty Insurance Company ("Allstate") submit the following Third Notice of Supplemental Authority.

- ***Progressive American Ins. Co. v. Columna Inc./Thomas Roush, M.D., a/a/o Andrea Mejia*, No. 3D21-286, 2022 WL 852297 (Fla. 3rd DCA Mar. 23, 2022) (copy attached).**

This decision pertains to Allstate's arguments at pages 20-22, 30-33 (in particular fn. 11), and 41-42 of Allstate's Initial Brief, and pages 7-19 of Appellants and Cross-Appellee Response and Reply Brief ("Allstate's Answer/Reply Brief") regarding Allstate's obligation under the Florida PIP Statute (Fla. Stat., §627.736) to only pay 80% of reasonable medical expenses under the mandatory PIP coverage when the amount billed by a medical provider is less than the schedule of maximum charges authorized by §627.736(5)(a)(1), of the Florida Supreme Court decision in *MRI Assocs. of Tampa, Inc. v. State Farm Mut. Auto. Ins. Co.*, No. SC-18-1390, 2021 WL 5832298 (Fla. Dec. 9, 2021), and at pages 1-3 of Allstate's Answer/Reply Brief regarding certification to the Florida Supreme Court. The trial court decision

at issue was decided before the Florida Supreme Court's *MRI Assocs.* decision. The Florida Third District Court of Appeal reversed a judgment against the insurer on the issue of whether the insurer had to pay 80% of the PIP statutory fee schedule amount rather than pay 80% of the billed amount in order to allow the trial court to consider the impact of *MRI Assocs.*, indicating that *MRI Assocs.* bears directly on this "billed amount" statutory interpretation issue.

Respectfully submitted,

By: /s/ Peter J. Valeta
Peter J. Valeta

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Attorneys for Appellants and Cross-Appellees, Allstate Insurance Company and Allstate Fire & Casualty Insurance Company

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 31st day of March, 2022, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF. I also certify that the foregoing document is being served this day on all counsel of record identified on the attached Service List in the manner specified, either via transmission of Notices of Electronic Filing generated by CM/ECF or in some other authorized manner for those counsel or parties who are not authorized to electronically receive Notices of Electronic Filing.

/s/ Peter J. Valeta
Peter J. Valeta, Esq.

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2022 WL 852297
Only the Westlaw citation is currently available.

District Court of Appeal of Florida, Third District.

PROGRESSIVE AMERICAN INSURANCE COMPANY, Appellant,
v.
COLUMNA INC./Thomas Roush, M.D., a/a/o Andrea Mejia, Appellee.

No. 3D21-286
|
Opinion filed March 23, 2022

An Appeal from the County Court for Miami-Dade County, Michaelle Gonzalez-Paulson, Judge. Lower Tribunal Nos. 19-7905 SP & 20-251AP

Attorneys and Law Firms

deBeaubien, Simmons, Knight, Mantzaris & Neal, LLP, and Kenneth P. Hazouri (Orlando), for appellant.

Landau & Associates, P.A., and Todd A. Landau and Matthew Emanuel (Sunrise), for appellee.

Before LOGUE, SCALES and GORDO, JJ.

Opinion

PER CURIAM.

***1** Appellant Progressive American Insurance Company ("Progressive"), the defendant below, challenges a final summary judgment entered in favor of appellee, plaintiff below, Columna Inc./Thomas Roush, M.D, a health care provider that was assigned the personal injury protection ("PIP") benefits of Progressive's Insured, Andrea Mejia. The parties' competing summary judgment motions were heard by the trial court on July 27, 2020, and, in reliance upon Geico v. Accident & Injury Clinic Inc., 290 So. 3d 980 (Fla. 5th DCA 2019), the trial court determined that Progressive was required to pay 80% of the amount adopted in the statutory fee schedule,[1] rather than 80% of the amount billed by appellee.

Neither the trial court, nor the parties, though, had the benefit of the Florida Supreme Court's recent opinion in MRI Associates of Tampa, Inc. v. State Farm Mutual Automobile Insurance Co., —— So. 3d ——, 46 Fla. L. Weekly S379, 2021 WL 5832298 (Fla. Dec. 9, 2021) ("MRI"). Although we employ a *de novo* standard of review when reviewing a trial court's adjudication of a summary judgment motion pertaining to an interpretation of the PIP statute,[2] we prefer here to allow the trial court, in the first instance, to adjudicate the parties' competing motions in light of MRI,[3] and we express no opinion on the merits of those motions. We, therefore, reverse the challenged judgment and remand for the trial court to consider the parties' competing motions in light of MRI.

Reversed and remanded with instructions.

All Citations

--- So.3d ----, 2022 WL 852297 (Mem)

Footnotes

1 See § 627.736(5)(a)1., Fla. Stat. (2018).

2 Rivera v. State Farm Mut. Auto. Ins. Co., 317 So. 3d 197, 202 (Fla. 3d DCA 2021).

3 See e.g. Alvarez v. Food Lion, Inc., 805 So. 2d 1032, 1033 (Fla. 2d DCA 2001); HJC Corp. v. Gallardo, 3D20-1837, —— So. 3d ——, 2022 WL 790278 (Fla. 3d DCA Mar. 16, 2022).

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March 25, 2022

VIA EFILING
David J. Smith, Clerk of Court
U.S. Court of Appeals for the 11th Circuit
56 Forsyth St., N.W.
Atlanta, Georgia 30303

RE: *Allstate v. Revival*, No. 21-10559

Dear Clerk:

Pursuant to Rule 28(j) and 11th Cir. Rule 28 IOP (6), Appellee/Cross-Appellant Revival Chiropractic, LLC ("Revival") hereby submits the following Notice of Supplemental Authority.

- ***GEICO Indemnity Company v. Affinity Healthcare Center at Waterford Lakes, PL a/a/o Ernst Pereira*, No. 5D21-184 (Fla. 5th DCA, March 25, 2022) (order attached hereto)**

This Opinion was entered *after* the Florida Supreme Court's decision in *MRI Assocs. of Tampa, Inc. v. State Farm Mut. Auto. Ins. Co.*, No. SC18-1390, 2021 WL 5832298 (Fla. December 9, 2021), and continues to follow the holdings of *GEICO Indemnity Company v. Accident & Injury Clinic, Inc. a/a/o Frank Irizarry*, 290 So. 3d 980 (Fla. 5th DCA 2019) ("*Irizarry*"), *GEICO Indemnity Company v. Muransky Chiro., P.A., a/a/o Carlos Dieste*, 323 So. 3d 742 (Fla. 4th DCA 2021) ("*Muransky*"), and *Hands On Chiropractic PL a/a/o Justin Wick v. GEICO General Ins. Co*., Case No. 5D20-2705 (Fla. 5th DCA September 10, 2021) ("*Wick*").

This Opinion pertains to the arguments contained in Revival's Amended Answer Brief at pages 16-24 that the PIP statute requires insurers like Allstate, who provide statutory notice of its intent to limit reimbursement pursuant to the Schedule, to reimburse all charges at 80% of the Schedule which is "the amount the insurer is required to pay."

This Opinion also pertains to the argument raised in Revival's Amended Answer Brief at footnote 9 that the Second District's ruling in *State Farm Mut. Auto. Ins. Co. v. MRI Assoc. of Tampa, Inc*., 252 So. 3d 773, 778 (Fla. Dist. Ct. App. 2018) is inapplicable to the issue at hand. The Florida Supreme Court in *MRI Assocs.* was tasked with interpreting the language of State Farm's policy. Allstate cannot argue that the Fifth District did not have the opportunity to consider the Florida Supreme Court's ruling in *MRI Assocs*. because the Appellee/Insurance Company in

that case filed the Florida Supreme Court's ruling in *MRI Assocs*. as supplemental authority in February of 2022.

This Opinion also pertains to the argument raised in Revival's Amended Answer Brief that, notwithstanding the Florida Supreme Court's decision in *MRI Assocs.*, this Court is still required to follow *Irizarry*, *Muransky*, and *Wick* which rulings were not overruled by *MRI Assocs.* found in pages 16-24, and 24-44 of the Answer Brief. This Court is now also required to follow the ruling in the attached Opinion

Respectfully Submitted,

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IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FIFTH DISTRICT

NOT FINAL UNTIL TIME EXPIRES TO FILE MOTION FOR REHEARING AND DISPOSITION THEREOF IF FILED

GEICO INDEMNITY COMPANY,

Appellant,

v.

Case No. 5D21-184
LT Case No. 2017-SC-12824-O

AFFINITY HEALTHCARE CENTER AT WATERFORD LAKES, PL A/A/O ERNST PEREIRA,

Appellee.

_____/

Opinion filed March 25, 2022

Appeal from the County Court
for Orange County,
David Johnson, Judge.

Rebecca Delaney and Scott W. Dutton, of Dutton Law Group, PA, Tampa, for Appellant.

Chad A. Barr, of Chad Barr Law, Altamonte Springs, for Appellee.

PER CURIAM.

Appellee, Affinity Healthcare Center at Waterford Lakes, PL, a/a/o Ernst Pereira, ("Affinity"), filed suit against Appellant, Geico Indemnity Company, ("Geico"), seeking reimbursement of additional personal injury protection (PIP) benefits pursuant to Geico's contract with its insured, Ernst Pereira. The county court entered summary final judgment in favor of Affinity in March 2018. Upon motion, the circuit court stayed the appeal of the county court's order pending resolution of other appeals in cases dealing with similar issues. This court lifted that stay on February 9, 2022.[1] The resolution of other appeals during the pendency of the stay has largely resolved the issues before us.

First, we conclude that the trial court properly determined that Geico was required to subtract the deductible from Affinity's total medical charges before applying reimbursement limitations. *See Progressive Select Ins. Co. v. Fla. Hosp. Med. Ctr.*, 260 So. 3d 219, 223 (Fla. 2018) ("A plain reading of the statutory provisions makes clear that the deductible must be subtracted from the provider's charges before the reimbursement limitation is applied."). Second, we conclude that the trial court erred in requiring Geico to pay 100%

[1] This appeal was transferred from the circuit court to this court due to a jurisdictional change which took effect January 1, 2021. *See* Ch. 20-61, § 3, Laws of Fla. (amending § 26.012(1), Florida Statutes).

of Affinity's billed amount where the billed amount was more than 80% of 200% of the applicable fee schedule. Although the trial court properly rejected Geico's argument that it was only required to pay 80% of the billed amount, it should have ordered Geico to pay 80% of 200% of the applicable fee schedule. *See Hands On Chiropractic PL v. Geico Gen. Ins. Co.*, 327 So. 3d 439, 443 (Fla. 5th DCA 2021) ("There is nothing in the applicable statute or Geico's policy that allows it to pay 80 percent of the billed amount. It must either pay the amount allowed based on the applicable fee schedule (80 percent of 200 percent) or, if the billed amount is less than the amount allowed, it is to be paid in full."). Finally, we conclude that Geico's argument that Affinity failed to comply with conditions precedent to filing suit was not preserved below. *See Saavedra v. Universal Prop. & Cas. Ins. Co.*, 314 So. 3d 729, 730 (Fla. 5th DCA 2021) ("Pursuant to rule 1.120(c), in denying that conditions precedent were met, a defendant is required to 'identify both the nature of the conditions precedent and the nature of the alleged noncompliance or nonoccurrence.'").

AFFIRMED, in part; REVERSED in part; REMANDED for further proceedings consistent with this opinion.

LAMBERT, C.J., EVANDER and COHEN, JJ., concur.

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March 21, 2022

VIA EFILING
David J. Smith, Clerk of Court
U.S. Court of Appeals for the 11th Circuit
56 Forsyth St., N.W.
Atlanta, Georgia 30303

RE: *Allstate v. Revival*, No. 21-10559

Dear Clerk:

Pursuant to Rule 28(j) and 11th Cir. Rule 28 IOP (6), Appellee/Cross-Appellant Revival Chiropractic, LLC ("Revival") hereby submits the following Notice of Supplemental Authority.

- ***AssociatesMD Medical Group, LLC v. Progressive Am. Ins. Co.*, No. COWE20010017 (Fla. February 25, 2022) (order attached hereto)**
- ***Associates in Family Practice of Broward, LLC v. Progressive Am. Ins. Co.*, No. COWE20008230 (Fla. February 25, 2022) (order attached hereto)**
- ***AssociatesMD Medical Group, LLC v. Progressive Am. Ins. Co.*, No. COWE20011576 (Fla. December 10, 2021) (order attached hereto)**
- ***AssociatesMD Medical Group, LLC v. Bristol West Ins. Co.*, No. COWE21001486 (Fla. January 21, 2022) (order attached hereto)**
- ***Associates in Family Practice of Broward, LLC v. Progressive Am. Ins. Co.*, No. COWE20009335 (Fla. January 21, 2022) (order attached hereto)**

These court orders were entered by Florida trial courts after the Florida Supreme Court's decision in *MRI Assocs. of Tampa, Inc. v. State Farm Mut. Auto. Ins. Co.*, No. SC18-1390, 2021 WL 5832298 (Fla. December 9, 2021) was issued, and all correctly and uniformly follow the holdings of *GEICO Indemnity Company v. Accident & Injury Clinic, Inc. a/a/o Frank lrizarry*, 290 So. 3d 980 (Fla. 5th DCA 2019) ("*Irizarry*"), *GEICO Indemnity Company v. Muransky Chiro., P.A., a/a/o Carlos Dieste*, 323 So. 3d 742 (Fla. 4th DCA 2021) ("*Muransky*"), and *Hands On Chiropractic PL a/a/o Justin Wick v. GEICO General Ins. Co*., Case No. 5D20-2705 (Fla. 5th DCA September 10, 2021) ("*Wick*"). These court orders all pertain to the arguments raised in Revival's Answer Brief regarding the inapplicability of the Second District's ruling in *State Farm Mut. Auto. Ins. Co. v. MRI Assoc. of Tampa, Inc*., 252 So. 3d 773, 778 (Fla. Dist. Ct. App. 2018) *of Tampa, Inc.* to the issue at hand found in footnote 9 of the Answer Brief. The Florida Supreme Court in *MRI Assocs.* was tasked with interpreting the language of State Farm's policy. In the case before this Court, the parties have stipulated that Allstate calculated reimbursements pursuant to the Schedule of Maximum Charges. These court orders also pertain to the argument that, notwithstanding *MRI Assocs.*, this Court is still required to follow *Irizarry*, *Muransky*, and *Wick* which rulings were not overruled by *MRI Assocs.* found in pages 16-24, and 24-44 of the Answer Brief.

Respectfully Submitted,

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IN THE COUNTY COURT OF THE 17TH JUDICIAL CIRCUIT
IN AND FOR BROWARD COUNTY, FLORIDA

CASE NO. COWE20010017 DIVISION 80 JUDGE Olga Gonzalez levine

AssociatesMD Medical Group LLC
Plaintiff(s) / Petitioner(s)
v.
Progressive American Insurance Company
Defendant(s) / Respondent(s)
_____/

ORDER

ORDER GRANTING PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT

THIS MATTER having come before the Court on Plaintiff's Motion for Summary Judgment, and the Court having considered the Motion, Respondent's Response, related evidence and having heard argument of the parties, and being otherwise fully advised, the Court finds as follows:

In this case, Plaintiff has filed a Declaratory Action and asked the Court to determine its rights under the applicable Insurance Policy and Florida Statute. More specifically, to determine if Florida Statute 627.736 and the subject policy of insurance permit the Defendant to remit payment for services billed below 200% of the applicable Medicare Part B fee schedule at 80% of the billed amount or if the Defendant is required to remit payment based upon 80% of 200% of the applicable Medicare Part B fee schedule when the subject policy only elects the fee schedule in Fla. Stat. 627.736(5)(a)(1).

The Court finds that, while Fla. Stat. 627.736 does not restrict an insurer from utilizing multiple factors present in Fla. Stat. 627.736 in determining the reimbursement amount of charges submitted, the policy of insurance at issue does not permit the Defendant to remit

payment based upon 80% of the billed amount where, as here, the billed amount was less than 200% of the appropriate Medicare Fee Schedule per Fla. Stat. 627.736(5)(a)(1). Defendant's policy states that Defendant will pay "80 percent of all reasonable expenses incurred for medically necessary medical, surgical, x-ray, dental and rehabilitative services…" The policy does not define "reasonable expenses," but rather states that Defendant "will determine to be unreasonable any charges incurred that exceed the maximum charges set forth in Section 627.736 (5)(a)(1) (a through f) of the Florida Motor Vehicle No-Fault Law, as amended." Further, the policy states that Defendant "will limit reimbursement to a maximum of, and pay an amount not to exceed 80 percent of the following schedule of maximum charges" with the policy then incorporating the language of Fla. Stat. 627.736(5)(a)(1) a.-f.

When "interpreting an insurance contract," the Court is "bound by the plain meaning of the contract's text." *State Farm Mut. Auto. Ins. Co. v. Menendez*, 70 So.3d 566, 569 (Fla. 2011). "If the language used in an insurance policy is plain and unambiguous, a court must interpret the policy in accordance with the plain meaning of the language used so as to give effect to the policy as it was written." Id. at 569–70 (quoting *Travelers Indem. Co. v. PCR, Inc.*, 889 So.2d 779, 785 (Fla. 2004)); *See also U.S. Fire Ins. Co. v. J.S.U.B., Inc.*, 979 So.2d 871, 877 (Fla. 2007) (stating that insurance contracts are construed according to their plain meaning). Further, in order for an exclusion or limitation in a policy to be enforceable, the insurer must clearly and unambiguously draft a policy provision to achieve that result. *See Auto–Owners Ins. Co. v. Anderson*, 756 So.2d 29, 36 (Fla.2000).

Here, Defendant's policy language promises to pay "medical benefits." "Medical benefits" are clearly defined as "80% of all reasonable expenses incurred for medically necessary... services." Further, the policy unequivocally states that Defendant "will limit reimbursement to a maximum of, and pay an amount not to exceed, 80 percent of the…schedule of maximum charges" as outlined in Fla. Stat. 627.736(5)(a)(1). Defendant's policy contains no notice that

Defendant will limit reimbursement to 80 percent of the submitted charge when the charge is for an amount less than amount allowed under Fla. Stat. 627.736(5)(a)1. Consequently, the Court finds that Defendant's policy language required it to remit payment for charges that are greater than 80 percent of 200 percent of the applicable Medicare Part B physician's fee schedule at 80 percent of 200 % of the applicable Medicare Part B physician's fee schedule and that paying 80 percent of the billed amount was improper.

The Court notes Defendant's reliance on the Florida Supreme Court's recent opinion in *MRI Assocs. of Tampa*, *Inc*. v. *State Farm Mutual Auto*. *Ins*. *Co*., No. SC18-1390, 2021 WL 5832298 (Fla. Dec. 9, 2021). However, the Court finds that the holding of *MRI Assocs.* is inapplicable here. In *MRI Assocs.*, the ultimate issue was whether State Farm's policy language sufficiently provided notice that it may limit payment of PIP bills pursuant to the schedule of maximum charges. The Florida Supreme Court held that it did, and that State Farm's particular policy language authorized it to use the fact-dependent factors in section 627.736(5)(a) to determine whether a charge was reasonable and then use the fee schedules in section 627.736(5)(a)1. as a cap on the reimbursement. State Farm's policy of insurance provided a specific definition of a "reasonable charge" and included that State Farm could consider:

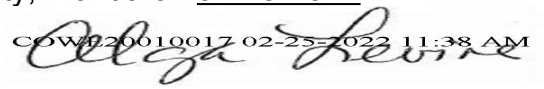
"one or more of the following: 1. usual and customary charges; 2. payments accepted by the provider; 3. reimbursement levels in the community; 4. various federal and state medical fee schedules applicable to motor vehicle and other insurance coverages; 5. *the schedule of maximum charges in the No-Fault Act*[;] 6. other information relevant to the reasonableness of the charge for the service, treatment, or supply; or 7. Medicare coding policies and payment methodologies of the federal Centers for Medicare and Medicaid Services, including applicable modifiers, if the coding policy or payment methodology does not constitute a utilization limit."

Unlike the policy of insurance at issue in *MRI Assocs.*, the Defendant's policy contains no such definition of reasonable charges. Rather, the policy unequivocally states that Defendant "will

limit reimbursement to a maximum of, and pay an amount not to exceed, 80 percent of the…schedule of maximum charges" as outlined in Fla. Stat. 627.736(5)(a)(1).

It is hereby ORDERED AND ADJUDGED that the Plaintiff's Motion for Summary Judgment is GRANTED.

DONE and **ORDERED** in Chambers, at Broward County, Florida on 02-25-2022.



COWE20010017 02-25-2022 11:38 AM
Hon. Olga Gonzalez levine
COUNTY JUDGE
Electronically Signed by Olga Gonzalez levine

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IN THE COUNTY COURT IN AND FOR BROWARD COUNTY, FLORIDA

ASSOCIATES IN FAMILY PRACTICE OF BROWARD, L.L.C. a/a/o DAPHANE GUNN

CASE NO. COWE-20-008230

Plaintiff,

vs.

PROGRESSIVE AMERICAN INSURANCE COMPANY,

Defendant.

_____/

FILED
FEB 25 2022
BY:

ORDER GRANTING PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT

THIS MATTER having come before the Court on Plaintiff's Motion for Summary Judgment, and the Court having considered the Motion, Respondent's Response, related evidence and having heard argument of the parties, and being otherwise fully advised, the Court finds as follows:

In this case, Plaintiff has filed a Declaratory Action and asked the Court to determine its rights under the applicable Insurance Policy and Florida Statute. More specifically, to determine if Florida Statute 627.736 and the subject policy of insurance permit the Defendant to remit payment for services billed below 200% of the applicable Medicare Part B fee schedule at 80% of the billed amount or if the Defendant is required to remit payment based upon 80% of 200% of the applicable Medicare Part B fee schedule when the subject policy only elects the fee schedule in Fla. Stat. 627.736(5)(a)(1).

The Court finds that, while Fla. Stat. 627.736 does not restrict an insurer from utilizing multiple factors present in Fla. Stat. 627.736 in determining the reimbursement amount of charges submitted, the policy of insurance at issue does not permit the Defendant to remit

payment based upon 80% of the billed amount where, as here, the billed amount was less than 200% of the appropriate Medicare Fee Schedule per Fla. Stat. 627.736(5)(a)(1). Defendant's policy states that Defendant will pay "80 percent of all reasonable expenses incurred for medically necessary medical, surgical, x-ray, dental and rehabilitative services..." The policy does not define "reasonable expenses," but rather states that Defendant "will determine to be unreasonable any charges incurred that exceed the maximum charges set forth in Section 627.736 (5)(a)(1) (a through f) of the Florida Motor Vehicle No-Fault Law, as amended." Further, the policy states that Defendant "will limit reimbursement to a maximum of, and pay an amount not to exceed 80 percent of the following schedule of maximum charges" with the policy then incorporating the language of Fla. Stat. 627.736(5)(a)(1) a.-f.

When "interpreting an insurance contract," the Court is "bound by the plain meaning of the contract's text." *State Farm Mut. Auto. Ins. Co. v. Menendez*, 70 So.3d 566, 569 (Fla. 2011). "If the language used in an insurance policy is plain and unambiguous, a court must interpret the policy in accordance with the plain meaning of the language used so as to give effect to the policy as it was written." Id. at 569–70 (quoting *Travelers Indem. Co. v. PCR, Inc.*, 889 So.2d 779, 785 (Fla. 2004)); *See also U.S. Fire Ins. Co. v. J.S.U.B., Inc.*, 979 So.2d 871, 877 (Fla. 2007) (stating that insurance contracts are construed according to their plain meaning). Further, in order for an exclusion or limitation in a policy to be enforceable, the insurer must clearly and unambiguously draft a policy provision to achieve that result. *See Auto–Owners Ins. Co. v. Anderson*, 756 So.2d 29, 36 (Fla.2000).

Here, Defendant's policy language promises to pay "medical benefits." "Medical benefits" are clearly defined as "80% of all reasonable expenses incurred for medically necessary... services." Further, the policy unequivocally states that Defendant "will limit reimbursement to a maximum of, and pay an amount not to exceed, 80 percent of the...schedule

of maximum charges" as outlined in Fla. Stat. 627.736(5)(a)(1). Defendant's policy contains no notice that Defendant will limit reimbursement to 80 percent of the submitted charge when the charge is for an amount less than amount allowed under Fla. Stat. 627.736(5)(a)1. Consequently, the Court finds that Defendant's policy language required it to remit payment for charges that are greater than 80 percent of 200 percent of the applicable Medicare Part B physician's fee schedule at 80 percent of 200 % of the applicable Medicare Part B physician's fee schedule and that paying 80 percent of the billed amount was improper.

The Court notes Defendant's reliance on the Florida Supreme Court's recent opinion in *MRI Assocs. of Tampa, Inc.* v. *State Farm Mutual Auto. Ins. Co.*, No. SC18-1390, 2021 WL 5832298 (Fla. Dec. 9, 2021). However, the Court finds that the holding of *MRI Assocs.* is inapplicable here. In *MRI Assocs.*, the ultimate issue was whether State Farm's policy language sufficiently provided notice that it may limit payment of PIP bills pursuant to the schedule of maximum charges. The Florida Supreme Court held that it did, and that State Farm's particular policy language authorized it to use the fact-dependent factors in section 627.736(5)(a) to determine whether a charge was reasonable and then use the fee schedules in section 627.736(5)(a)1. as a cap on the reimbursement. State Farm's policy of insurance provided a specific definition of a "reasonable charge" and included that State Farm could consider:

> *"one or more of the following*: 1. usual and customary charges; 2. payments accepted by the provider; 3. reimbursement levels in the community; 4. various federal and state medical fee schedules applicable to motor vehicle and other insurance coverages; 5. *the schedule of maximum charges in the No-Fault Act*[;] 6. other information relevant to the reasonableness of the charge for the service, treatment, or supply; or 7. Medicare coding policies and payment methodologies of the federal Centers for Medicare and Medicaid Services, including applicable modifiers, if the coding policy or payment methodology does not constitute a utilization limit."

Unlike the policy of insurance at issue in *MRI Assocs.*, the Defendant's policy contains no such definition of reasonable charges. Rather, the policy unequivocally states that Defendant "will limit reimbursement to a maximum of, and pay an amount not to exceed, 80 percent of the…schedule of maximum charges" as outlined in Fla. Stat. 627.736(5)(a)(1).

It is hereby ORDERED AND ADJUDGED that the Plaintiff's Motion for Summary Judgment is GRANTED.

DONE AND ORDERED in Chambers at Broward County West Regional Courthouse, Broward, Florida, on this 25 day of February, 2022.

Honorable Tabitha Blackmon

Copies Furnished To:
All Counsel of Record

IN THE COUNTY COURT IN AND FOR BROWARD COUNTY, FLORIDA
CIVIL DIVISION
CASE NUMBER: COWE20011576

ASSOCIATESMD MEDICAL GROUP LLC A/A/O MARTINEZ, EMMIL,

Plaintiff,

vs.

PROGRESSIVE SELECT INSURANCE COMPANY,

Defendant.

_____ /

ORDER GRANTING PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT

THIS MATTER having come before the Court on Plaintiff's Motion for Summary Judgment, and the Court having considered the Motion, related evidence and having heard argument of the parties, and being otherwise fully advised, the Court finds as follows:

In this case, Plaintiff has filed a Declaratory Action and asked the Court to determine its rights under the applicable Insurance Policy and Florida Statute. More specifically, to determine if Florida Statute 627.736 permits the Defendant to remit payment for services billed below 200% of the applicable Medicare Part B fee schedule at 80% of the billed amount or if the Defendant is required to remit payment based upon 80% of 200% of the applicable Medicare Part B fee schedule when the subject policy elects use of the fee schedule in Fla. Stat. 627.736(5)(a)(1).

The Court finds that the fee schedule set forth in Florida Statute 627.736, which was adopted by the Defendant in their policy, does not permit an insurer to remit payment based upon 80% of the billed amount when the billed amount is less than 200% of the appropriate Medicare Fee Schedule per Fla. Stat. 627.736(5)(a)(1). The Court finds that when an insurer utilizes said

fee schedule, the insurer is compelled to remit payment, for amounts charged that are greater than 80% of 200% of the Medicare Part B physician's fee schedule but less than 200% of the Medicare Part B physician's fee schedule, at 80% of 200% of the Medicare Part B physician's fee schedule. *See Hands On Chiropractic PL a/a/o Maureen Hudas v. GEICO General Insurance Company*, 326 So.3d 819 (Fla. 5th DCA 2021); *Hands On Chiropractic PL a/a/o Justin Wick v. GEICO General Insurance Company*, 2021 WL 4127820 (Fla. 5th DCA (5D20-2705) 2021 (Rehearing denied October 8, 2021); *Geico Indemnity Company v. Muransky Chiropractic a/a/o Carlos Dieste*, 4D21-457, 2021 WL 2584107, (Fla. 4th DCA 2021); and *Geico Ind. Co. v. Accident & Injury Clinic a/a/o Frank Irizarry*, 290 So.3d 980 (Fla. 5th DCA 2019)

It is hereby ORDERED AND ADJUDGED that the Plaintiff's Motion for Summary Judgment is GRANTED.

DONE AND ORDERED in Chambers at Broward County West Regional Courthouse, Broward, Florida, on this 10 day of September, 2021.

December

Honorable Natasha DePrimo

Copies Furnished To:
Eric Polsky, Attorney for Defendant
Geoffrey Levy, Esq., Esquire, Attorney for Plaintiff
Aaron Draizin, Esq., Esquire, Attorney for Plaintiff

IN THE COUNTY COURT OF THE 17TH JUDICIAL CIRCUIT
IN AND FOR BROWARD COUNTY, FLORIDA

CASE NO. COWE21001486 DIVISION 82 JUDGE Kal Evans

AssociatesMD Medical Group Inc
Plaintiff(s) / Petitioner(s)
v.
Bristol West Insurance
Defendant(s) / Respondent(s)
_____/

ORDER GRANTING PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT

THIS MATTER having come before the Court on Plaintiff's Motion for Summary Judgment, and the Court having considered the Motion, Respondent's Response, related evidence and having heard argument of the parties, and being otherwise fully advised, the Court finds as follows:

In this case, Plaintiff has filed a Declaratory Action and asked the Court to determine its rights under the applicable Insurance Policy and Florida Statute. More specifically, to determine if Florida Statute 627.736 permits the Defendant to remit payment for services billed below 200% of the applicable Medicare Part B fee schedule at 80% of the billed amount or if the Defendant is required to remit payment based upon 80% of 200% of the applicable Medicare Part B fee schedule when the subject policy elects use of the fee schedule in Fla. Stat. 627.736(5)(a)(1).

The Court finds that the fee schedule set forth in Florida Statute 627.736, which was clearly adopted by the Defendant in their policy, does not permit an insurer to remit payment based upon 80% of the billed amount when the billed amount is less than 200% of the appropriate Medicare Fee Schedule per Fla. Stat. 627.736(5)(a)(1). Respondent's policy of insurance clearly defines "Reasonable Expense" as "the amount provided by the schedule of

maximum charges as contained in the Florida Motor Vehicle No-Fault Law (§§627.730-627.7405, Florida Statutes) as may be amended from time to time, as stated in LIMITS OF LIABILITY of this Part". The Court thus finds that when an insurer clearly states it will apply coverage and reimburse “Reasonable Expenses” at the subject fee schedule, the insurer is compelled to remit payment, for amounts charged that are greater than 80% of 200% of the Medicare Part B physician's fee schedule but less than 200% of the Medicare Part B physician's fee schedule, at 80% of 200% of the Medicare Part B physician's fee schedule. *See Hands On Chiropractic PL a/a/o Maureen Hudas v. GEICO General Insurance Company*, 326 So.3d 819 (Fla. 5th DCA 2021); *Hands On Chiropractic PL a/a/o Justin Wick v. GEICO General Insurance Company*, 2021 WL 4127820 (Fla. 5th DCA (5D20-2705) 2021 (Rehearing denied October 8, 2021); *Geico Indemnity Company v. Muransky Chiropractic a/a/o Carlos Dieste*, 4D21-457, 2021 WL 2584107, (Fla. 4th DCA 2021); and *Geico Ind. Co. v. Accident & Injury Clinic a/a/o Frank Irizarry*, 290 So.3d 980 (Fla. 5th DCA 2019)

It is hereby ORDERED AND ADJUDGED that the Plaintiff’s Motion for Summary Judgment is GRANTED.

DONE and **ORDERED** in Chambers, at Broward County, Florida on 01-21-2022.

COWE21001486 01-21-2022 4:54 PM

COWE21001486 01-21-2022 4:54 PM
Hon. Kal Evans
COUNTY JUDGE
Electronically Signed by Kal Evans

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IN THE COUNTY COURT OF THE 17TH JUDICIAL CIRCUIT
IN AND FOR BROWARD COUNTY, FLORIDA

CASE NO. COWE20009335 DIVISION 82 JUDGE Kal Evans

Associates in Family Practice of Broward LLC
Plaintiff(s) / Petitioner(s)
v.
Progressive American Insurance Company
Defendant(s) / Respondent(s)
_____/

ORDER GRANTING PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT

THIS MATTER having come before the Court on Plaintiff's Motion for Summary Judgment, and the Court having considered the Motion, related evidence and having heard argument of the parties, and being otherwise fully advised, the Court finds as follows:

In this case, Plaintiff has filed a Declaratory Action and asked the Court to determine its rights under the applicable Insurance Policy and Florida Statute. More specifically, to determine if Florida Statute 627.736 permits the Defendant to remit payment for services billed below 200% of the applicable Medicare Part B fee schedule at 80% of the billed amount or if the Defendant is required to remit payment based upon 80% of 200% of the applicable Medicare Part B fee schedule when the subject policy elects use of the fee schedule in Fla. Stat. 627.736(5)(a)(1).

The Court finds that the fee schedule set forth in Florida Statute 627.736, which was adopted by the Defendant in their policy, does not permit an insurer to remit payment based upon 80% of the billed amount when the billed amount is less than 200% of the appropriate Medicare Fee Schedule per Fla. Stat. 627.736(5)(a)(1). The Court finds that when an insurer utilizes said fee schedule, the insurer is compelled to remit payment, for amounts charged that

are greater than 80% of 200% of the Medicare Part B physician's fee schedule but less than 200% of the Medicare Part B physician's fee schedule, at 80% of 200% of the Medicare Part B physician's fee schedule. *See Hands On Chiropractic PL a/a/o Maureen Hudas v. GEICO General Insurance Company*, 326 So.3d 819 (Fla. 5th DCA 2021); *Hands On Chiropractic PL a/a/o Justin Wick v. GEICO General Insurance Company*, 2021 WL 4127820 (Fla. 5th DCA (5D20-2705) 2021 (Rehearing denied October 8, 2021); *Geico Indemnity Company v. Muransky Chiropractic a/a/o Carlos Dieste*, 4D21-457, 2021 WL 2584107, (Fla. 4th DCA 2021); and *Geico Ind. Co. v. Accident & Injury Clinic a/a/o Frank Irizarry*, 290 So.3d 980 (Fla. 5th DCA 2019)

It is hereby ORDERED AND ADJUDGED that the Plaintiff's Motion for Summary Judgment is GRANTED.

DONE and **ORDERED** in Chambers, at Broward County, Florida on 01-21-2022.

COWE20009335 01-21-2022 4:52 PM

COWE20009335 01-21-2022 4:52 PM
Hon. Kal Evans
COUNTY JUDGE
Electronically Signed by Kal Evans

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COZEN O'CONNOR

Peter J. Valeta
Direct Phone 312-474-7895
Direct Fax 312-878-2022
pvaleta@cozen.com

March 16, 2022

VIA EFILING

David J. Smith, Clerk of Court
U.S. Court of Appeals for the 11th Circuit
56 Forsyth St., N.W.
Atlanta, Georgia 30303

Re: *Allstate v. Revival*, Case No. 21-10559

Dear Clerk:

Pursuant to FRAP 28(j) and 11th Circuit Rule 28 IOP (6), Appellants-Cross-Appellees Allstate Insurance Company and Allstate Fire & Casualty Insurance Company ("Allstate") submit the following Second Notice of Supplemental Authority.

- ***AssociatesMD Medical Group LLC v. Security Nat. Ins. Co.*, Case No. COWE21002311, County Court, Broward County, Florida (Feb. 25, 2022) (copy attached).**

This decision pertains to Allstate's arguments at pages 20-22, 30-33 (in particular fn. 11), and 41-42 of Allstate's Initial Brief, and pages 7-19 of Appellants and Cross-Appellee Response and Reply Brief ("Allstate's Answer/Reply Brief") regarding Allstate's obligation under the Florida PIP Statute (Fla. Stat., §627.736) to only pay 80% of reasonable medical expenses under the mandatory PIP coverage when the amount billed by a medical provider is less than the schedule of maximum charges authorized by §627.736(5)(a)(1), regarding the application of the appellate decisions in *GEICO Indemnity Company v. Accident & Injury Clinic, Inc. a/a/o Frank lrizarry*,290 So. 3d 980 (Fla. 5th DCA 2019), *GEICO Indemnity Company v. Muransky Chiro., P.A., a/a/o Carlos Dieste*, 323 So. 3d 742 (Fla. 4th DCA 2021),

and *Hands On Chiropractic PL a/a/o Justin Wick v. GEICO General Ins. Co.*, Case No. 5D20-2705 (Fla. 5th DCA September 10, 2021), in light of the Florida Supreme Court decision in *MRI Assocs. of Tampa, Inc. v. State Farm Mut. Auto. Ins. Co.*, No. SC-18-1390, 2021 WL 5832298 (Fla. Dec. 9, 2021), and at pages 1-3 of Allstate's Answer/Reply Brief regarding certification to the Florida Supreme Court.

Respectfully submitted,

By: /s/ Peter J. Valeta
Peter J. Valeta

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Attorneys for Appellants and Cross-Appellees, Allstate Insurance Company and Allstate Fire & Casualty Insurance Company

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 16th day of March, 2022, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF. I also certify that the foregoing document is being served this day on all counsel of record identified on the attached Service List in the manner specified, either via transmission of Notices of Electronic Filing generated by CM/ECF or in some other authorized manner for those counsel or parties who are not authorized to electronically receive Notices of Electronic Filing.

/s/ Peter J. Valeta
Peter J. Valeta, Esq.

SERVICE LIST

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IN THE COUNTY COURT OF THE 17TH JUDICIAL CIRCUIT
IN AND FOR BROWARD COUNTY, FLORIDA

CASE NO. COWE21002311 DIVISION 80 JUDGE Olga Gonzalez levine

AssociatesMD Medical Group LLC
Plaintiff(s) / Petitioner(s)
v.
Security National Insurance Company
Defendant(s) / Respondent(s)
_____/

ORDER DENYING PLAINTIFF'S MOTION FOR FINAL SUMMARY JUDGMENT

THIS CAUSE having come before the Court upon Plaintiffs Motion for Final Summary Judgment and Memorandum of Law in Support, and after presentations of the parties, and this Court being otherwise advised in the premises, it is hereby Ordered and Adjudged as follows:

FACTUAL BACKGROUND

1. The issue presented in Plaintiff's Motion for Summary judgment is the sufficiency of Security National Insurance Company's (hereinafter "SNIC" or "Defendant") policy language and whether, pursuant to the Defendant's policy language, it properly reimbursed Plaintiff's medical charges.
2. Plaintiff contends that SNIC failed to pay the proper amount for specific CPT codes at issue pursuant to the Personal Injury Protection ("PIP") statute as SNIC elected to reimburse Plaintiff's bills in accordance with Fla. Stat. §627.736(5)(a)1, SNIC reimbursed at 80% of the amount billed, and is thereby precluded from reimbursing charges other than at 80% of the schedule of maximum charges.
3. Defendant contends that its policy language clearly and unambiguously puts Plaintiff on

notice of its intent to limit reimbursement pursuant to the schedule of maximum charges as necessary and as contained in the Fla. Stat., §627.736(5), and that all payments owed Plaintiff were properly processed, allowed, and paid.

4. The Parties agree that there are no disputes regarding the subject loss, applicable Personal Injury Protection coverage, the reasonableness, relatedness, or medical necessity of the medical services rendered by the Plaintiff that are the subject of the lawsuit, the sufficiency of Plaintiff's pre-suit demand letter, standing pursuant to the assignment of benefits, the amount billed for the codes at issue, and that Defendant reimbursed Plaintiff 80% of the amount billed. Therefore, there are no disputed issues of material fact regarding amounts billed by Plaintiff and reimbursed by Defendant.
5. In MRI Associates of Tampa, Inc., v. State Farm Mutual Automobile Insurance Company, No. SC19-1390, issued 12/9/21, the Florida Supreme Court answered the following certified question in the negative.

"Does section 627.736(5)(a) Florida Statutes 2013 preclude an insurer that elects to limit PIP reimbursements based on the schedule of maximum charges from also using the separate statutory factors for determining the reasonableness of charge."

6. In light of the MRI Associates ruling, the sole issue presented to the Court for adjudication is whether the plain language of Defendant's policy precludes Defendant from limiting its reimbursement to 80% of the total billed amount when the amount billed is less than the statutory fee schedule.

CONCLUSIONS OF LAW

7. Pursuant to Fla. Stat. §62736, the language of the policy, and recent precedent set in MRI Associates, the Court concludes that the Defendant is not precluded from paying

80% of the amount billed when said charges are billed at an amount below the schedule of maximum charges or fee schedule.

8. To arrive at this conclusion, a review of the essential coverage mandate is needed; namely Fla. Stat. §627.736(1)(a) which states:

1. Required Benefits: - Every insurance policy complying with the security requirements of s. 627.733 shall provide personal injury protection to the named insured . . . as follows:

a. Medical benefits. – **Eighty percent of all reasonable expenses** for medically necessary medical, surgical, X-ray, dental, and rehabilitative services. . . . . Fla. Stat. §627.736(1)(a) (2016) (emphasis added).

9. Although the PIP statute does not define a reasonable expense it does list factors to be considered. Fla. Stat. §627.736(5)(a), states "In determining whether a charge for a particular service, treatment or otherwise is reasonable, consideration may be given to evidence of usual and customary charges..." as one of the factors that may be considered.

10. SECURITY NATIONAL INSURANCE COMPANY'S policy endorsement Form FLSNPIP01 (06/18) states:

Your policy is modified as follows:

PART C – PERSONAL INJURY PROTECTION COVERAGE is replaced by the following:

PERSONAL INJURY PROTECTION COVERAGE

PERSONAL INJURY PROTECTION COVERAGE INSURING AGREEMENT

If you pay a premium **we** will pay to or on behalf of the **injured person** the following benefits. Payments will be made only when **bodily injury** is caused by an **accident** arising from the ownership, maintenance, or use of a **motor vehicle**.

1. Medical Benefits – Eighty percent of all **reasonable expenses** (as defined in this policy) for **medically necessary** medical, surgical, x-ray, dental, and rehabilitative services, including prosthetic devices and **medically necessary** ambulance, hospital, and nursing services if the individual receives initial services and care pursuant to 1.a., below, within 14 days after the motor vehicle accident. The medical benefits provide reimbursement only for: …

On pages 4-5 are found:

ADDITIONAL DEFINITIONS UNDER PART C

The following definitions apply throughout Part C of the policy. …

7. **Reasonable expenses** shall mean the amount provided by the schedule of maximum charges as contained in the Florida Motor Vehicle No-Fault Law (§§627.730-627.7405, Florida Statutes) as may be amended from time to time, as stated in LIMITS OF LIABILITY of this Part. However, in no event shall **reasonable expenses** exceed the amount the provider customarily charges for like services or supplies…

11. The Court finds that Defendant has policy language that elects payment pursuant to Fla. Stat. §627.736(5)(a)(1), but Defendant's reasonable expenses definition also reserves the right to limit reimburse in accordance with one of the enumerated factors under Fla. Stat. §627.736(5)(a), which is 80% of the provider's usual and customary charge.
12. As Defendant reimbursed 80% of the amount billed as allowed by the PIP statute, supporting case law, and Defendant's policy language.

13. The Court concludes that the Defendant correctly allowed and reimbursed Plaintiff's medical charges, in line with the terms and conditions of its policy language and with Florida Statutes Section 627.736(5), and Plaintiff's Motion for Final Summary Judgment is hereby,

DENIED WITH PREJUDICE.
DONE and **ORDERED** in Chambers, at Broward County, Florida on 02-25-2022.

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COWE21002311 02-25-2022 12:12 PM
Hon. Olga Gonzalez levine
COUNTY JUDGE
Electronically Signed by Olga Gonzalez levine

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