

IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY, FLORIDA

APPELLATE DIVISION (CIVIL): AY
CASE NO.: 502012AP000034XXXXMB
L.T. NO.: 502009SC009288XXXXMB

LAKE WORTH EMERGENCY
CHIROPRACTIC CENTER, P.A.,
(a/a/o Ryan Garter)
Appellant,

v.

STATE FARM MUTUAL
AUTOMOBILE INSURANCE COMPANY,
Appellee.

Opinion filed: JUL 14 2014

Appeal from the County Court in and for Palm Beach County,
Judge Sandra Bosso-Pardo.

For Appellant: Marlene Reiss, Esq.
9130 South Dadeland Blvd.,
Datan Two, Suite 1612
Miami, FL 33156
marlenereisspa@gmail.com

For Appellee: Nancy Gregoire, Esq.
1301 East Broward Blvd.,
Suite 230
Fort Lauderdale, FL 33301
gregoirecourt@kblglaw.com

PER CURIAM.

Appellant, Lake Worth Emergency Chiropractic Center, LLC as assignee of Ryan Garter, appeals the entry of Final Summary Judgment for Appellee, State Farm Mutual Automobile Insurance Company, on Lake Worth Emergency Chiropractic Center's claim for benefits pursuant to Florida's Motor Vehicle No-Fault Statute, section 627.736, Florida Statutes. The trial court entered Final Summary Judgment after finding that the pre-suit demand letter, which

included a demand for an amount that was not overdue, failed to strictly comply with the requirements in section 627.736(10).¹ We affirm the entry of Final Summary Judgment in favor of State Farm.

Lake Worth Emergency Chiropractic Center sued State Farm based upon a pre-suit demand letter that included CPT code 99241 in the amount of \$85.00 for date of service November 17, 2008. State Farm moved for Final Summary Judgment, alleging that the demand letter failed to comply with section 627.736(10). Lake Worth Emergency Chiropractic Center did not file a reply, affidavit, or any other filing in response to State Farm's Motion for Final Summary Judgment. The trial court found that State Farm did not receive "any CMS 1500 form or bill containing CPT code 99241 for date of service November 17, 2008 in the amount of \$85.00" and that the counsel for Lake Worth Emergency Chiropractic Center "admitted at oral argument that CPT code 99241 in the amount of \$85.00 for date of service November 17, 2008 was listed in error on the demand letter." We defer to the trial court's findings of fact and agree with the trial court's conclusions of law.

The pre-suit demand letter that included a single incorrect entry as part of its itemized demands is a sufficient basis to require summary judgment for the defendant under section 627.736(10). "The statutory requirements surrounding a demand letter are significant, substantive preconditions to bringing a cause of action for PIP benefits." *MRI Associates of Am., LLC v. State Farm Fire & Cas. Co.*, 61 So. 3d 462, 465 (Fla. 4th DCA 2011). Accordingly, section 627.736(10) requires strict compliance. *See id.*; *see also Fountain Imaging of West Palm Beach, LLC v. Progressive Express Ins. Co.*, 14 Fla. L. Weekly Supp. 614a (Fla. 15th Cir. Ct.

¹ As the Florida Supreme Court has observed, "[t]he statutory requirements originally contained in section 627.736(11), Florida Statutes (2001), are now located in section 627.736(10), Florida Statutes (2009)." *Menendez v. Progressive Express Ins. Co.*, 35 So. 3d 873, 874 n.1 (Fla. 2010). The parties referred to both subsection (10) and subsection (11) interchangeably. The differences between the two versions of the statute are not substantive to this appeal.

2007); *Venus Health Center (a/a/o Joaly Rojas) v. State Farm Fire & Casualty Co.*, 21 Fla. L. Weekly Supp. 496a (Fla. 11th Cir. Ct. 2014); *Hernandez v. Progressive Express Ins. Co.*, 14 Fla. L. Weekly Supp. 232c (Fla. 11th Cir. Ct. 2007); *Chambers Med. Group, Inc. (a/a/o Marie St. Hillare) v. Progressive Express Ins. Co.*, 14 Fla. L. Weekly Supp. 207a (Fla. 13th Cir. Ct. 2006). “Inaccurate, misleading, illegible, or stale information contained in a demand does not strictly comply with the statutory requirements.” *Chambers Med. Group, Inc.*, 14 Fla. L. Weekly Supp. 207a.

The demand letter in this case listed an amount that was not overdue, rendering the demand premature and inaccurate. Accordingly, the demand letter did not strictly comply with section 627.736(10), and Lake Worth Emergency Chiropractic Center failed to satisfy the condition precedent to filing its lawsuit. The trial court’s entry of Final Summary Judgment in favor of State Farm is therefore AFFIRMED.

Appellant’s Motion for Appellate Attorney’s Fees, filed June 6, 2012, is DENIED. Appellee’s Motion for Appellate Attorney’s Fees, filed October 30, 2013, is GRANTED subject to the trial court’s determination that State Farm’s proposal for settlement was valid, enforceable, and made in good faith pursuant to section 768.79, Florida Statutes.

COX, J. KEYSER, SASSER, JJ., concur.