

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

APPELLATE DIVISION (CIVIL)
CASE NO.: 502009AP000040XXXXMB
L.T.: 502008SC009688XXXXSB

ST. LUCIE INJURY CENTER, INC.,
A/A/O ASTRID B. EBNER,

Appellant,

v.

USAA CASUALTY
INSURANCE COMPANY,

Appellee.

Opinion filed: **FEB 28 2011**

✓ **Appeal from the County Court in and for Palm Beach County,
Judge James L. Martz.**

✓ For Appellant: Marlene S. Reiss, Esq., Law Offices of Marlene S. Reiss, Esq., P.A., 9130
South Dadeland Boulevard, Datan II--Suite 1612, Miami, Florida 33156

✓ For Appellee: Douglas H. Stein, Esq., Seipp & Flick, LLP, Two Alhambra Plaza, Suite
800, Coral Gables, Florida 33134

PER CURIAM.

REVERSED. On May 20, 2007, Plaintiff/Appellant Astrid Ebner was injured in a car accident. Ms. Ebner received treatment for her injuries at St. Lucie Injury Center ("St. Lucie") from June 28, 2007 through July 30, 2007, subsequently assigning her personal injury protection benefits to St. Lucie. On June 28, 2007, Ms. Ebner executed a disclosure and acknowledgement ("D&A") form and on July 12, 2007 Defendant/Appellee USAA Casualty Insurance Company ("USAA") received the D&A form. USAA denied payment of St. Lucie's assigned bills on the

basis that "the standard disclosure and acknowledgement form did not meet the statutory requirements." St. Lucie initiated an action for damages.

In response to suit, USAA specifically alleged that the:

Plaintiff is in violation or has otherwise failed to comply with Florida Statute §627.736(5) including but not limited to untimely billing and billing which fails to comply with the Physicians Current Procedural Terminology (CPT), ICD-9 Standards and HCPCS standards and; failure of Plaintiff in furnishing the signatures required; upcoding and unbundling of bills.

USAA's Second Amended Motion for Summary Judgment was granted by the trial court (and included an entry of final judgment) on June 18, 2009. In its June 18, 2009 Order, the trial court made the following findings:

[t]he provider must comply for the initial date of service before any subsequent dates of service may be addressed. Without a sufficient disclosure and acknowledgement form there is no subsequent date of service.

* * *

CPT Codes do not suffice to describe the services actually rendered . . . there is no indicia of what services were actually rendered other [sic] arcane numeric codes. Additionally, the fact that the patient signed the treatment records, is similarly deficient . . . the treatment records do not contain caveats and disclosures for criminal penalties.

* * *

The only logical interpretation of the statutory scheme requires the healthcare provider to indeed execute the form at the time of the initial treatment [in this case the doctor signed after the treatment was performed].

On July 15, 2009, St. Lucie filed a Notice of Appeal. In January of 2010, the Fifth District Court of Appeal issued its opinion in *Florida Med. & Injury Ctr., Inc. v. Progressive Express Ins. Co.*, 29 So. 3d 329 (Fla. 5th DCA 2010), finding, among other things, that an attachment of medical records to a D&A form can be considered sufficient to put an insurer on notice as to the fact and amount of loss. Additionally, the court found that initial completion of a D&A form is not a condition precedent to payment and that an insured's submission of a flawed

D&A form does not preclude an insured's later filing of a claim for PIP benefits. USAA subsequently filed a Concession to Reversal.

We therefore remand this matter to the lower court for a judgment consistent with the Fifth District in *Florida Medical* and reverse the entry of summary judgment in favor of Appellee USAA. St. Lucie's Motion for Attorney's Fees is GRANTED and the matter is likewise remanded to the lower court to determine the reasonable amount thereof.

KELLEY, FRENCH, and MCCARTHY, JJ., concur.