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

STATE FARM FIRE AND
CASUALTY COMPANY,

Appellant,

v.

MRI ASSOCIATES OF AMERICA, LLC.
(a/a/o EBBA REGISTER),

Appellee.
_____/

APPELLATE DIVISION (CIVIL)
CASE NO: 502009AP000014XXXXMB
L.T.: 502006CC015171XXXXMB RF
DIVISION: 'AY'

Opinion filed: MAY - 4 2010

**Appeal from the County Court in and for Palm Beach County,
Judge Debra Moses Stephens.**

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PER CURIAM

REVERSED AND REMANDED.

The Appellants, State Farm Fire and Casualty Company ("State Farm"), seek review of the trial court's final judgment entered in favor of the Appellee, MRI Associates of America, LLC. ("MRI Associates"). We find MRI Associates failed to comply with the Personal Injury Protection (PIP) statute, and reverse.

On June 8, 2006, Ebba Register ("insured") sustained injuries in an automobile accident. As a result of the accident, the insured sought chiropractic care from Keith Arnold, D.C. ("Dr. Arnold") who, during the course of treatment, recommended the insured receive a cervical and lumbar MRI. The insured received the two MRIs from MRI Associates, to which she assigned her PIP benefits. At all relevant times, the insured had a valid insurance policy issued by State Farm which provided PIP coverage for medical expenses incurred by the insured for bodily injuries sustained in the aforementioned accident.

MRI Associates sent State farm its medical records and Health Insurance Claim Form (HCFA) for the two MRIs performed on the insured on July 7, 2006. According to this HCFA, the amount due from State Farm for each MRI was $1,707.33 and $1,816.17, respectively.[1] Upon receipt of MRI Associates' records, State Farm submitted the records, along with the records of the insured's treating chiropractor Keith Arnold, to Alan Spinner, D.C. ("Dr. Spinner") for a determination of the medical necessity of the two MRIs.

On August 14, 2006, Dr. Spinner provided State Farm with a three-page report ("Spinner Report") detailing his review of the insured's medical records and determining that the two MRIs conducted by MRI Associates were not reasonable, related to the accident, or necessary. On August 24, 2006, State Farm sent MRI Associates an Explanation of Review ("EOB") denying the claims with several explanations, including: (1) the two MRIs lacked medical necessity based on the Spinner Report; and (2) the amount for each MRI exceeded the allowable amount under section 627.736(5), Florida Statutes.

[1] The Record shows that the 2001 Medicare Part B approved amounts under section 627.736(5)(b)(5) for each MRI were $587.54 and $543.56, respectively. Thus, MRI Associates was entitled to charge 200% of the Medicare approved amounts, or $1,175.08 and $1,087.12, respectively. The amounts listed in the HCFA do not mirror the allowable amounts under section 627.736(5)(b)(5).

MRI Associates sent State Farm a demand letter pursuant to section 627.736(11) ("Presuit Demand Letter") on August 25, 2006. The Presuit Demand Letter showed the same billed amounts as listed in the HCFA for each MRI, but contained an additional column labeled "Amount in Dispute if Paid at 80%." The amounts in this column showed the lumbar MRI amount as $1,146.22 and the cervical MRI amount as $1,061.31.[2] On September 14, 2006, State Farm acknowledged receipt of the Presuit Demand Letter and once again denied payment of MRI Associates' charges based on the Spinner Report.

On March 11, 2008, the lower court granted MRI Associates' Cross-Motion for Summary Judgment reasoning that a bill in excess of the amount prescribed under section 627.736(5), Florida Statutes, does not act as an absolute defense to payment of the bill by State Farm. The lower court then granted MRI Associates' renewed Motion for Summary Judgment on November 6, 2008, holding that the Spinner Report could not be used to deny MRI Associates' bill because it was "not a 'valid report' as contemplated by section 627.736(7)(a)." On February 4, 2009, the lower court entered Final Summary Judgment in favor of MRI Associates. State Farm timely appealed.

As MRI Associates concedes in its Answer Brief, the Fourth District Court of Appeal recently issued its opinion in *Central Magnetic Imaging Open MRI of Plantation, Ltd. v. State Farm Fire and Cas. Ins. Co.*, 22 So. 3d 782 (Fla. 4th DCA 2009).[3] In *Central Magnetic Imaging*, the court decisively held that the "valid report" required by the [PIP] statute does not require an insurer to order an IME before denying a claim for PIP benefits." *Id.* at 783. (emphasis added). The court further added that the "plain language of the statute permits a

[2] Once again, these figures do not exactly match the amount due under the 2001 Medicare Part B Fee Schedule. *See supra* note 1.

[3] This Court duly notes that the lower court did not have the benefit of this case being available during the pendency of the original proceedings.

report to be based on review of treatment records." *Id.* at 784. It is quite clear that the landscape of the law has changed in the Fourth District and the Spinner Report should have been admissible as evidence for State Farm to deny MRI Associates' bill (assuming it was otherwise legally sufficient) and Summary Judgment was erroneously granted in favor of MRI Associates.

Notwithstanding the issuance of *Central Magnetic Imaging,* the lower court erroneously granted summary judgment in favor of MRI Associates. In interpreting the language of section 627.736, Florida Statutes, trial courts across the state have imposed a duty on medical care providers to specify the proper compensable amount owed by insurers in order to satisfy the requirements of the statute. The language in the statute is unambiguous and places the burden on the medical care provider/claimant to "leave no question as to what amounts are being sought by the notice." *Tampa Bay Imaging, LLC. v. Esurance Ins. Co.,* 17 Fla. L. Weekly Supp. 234a (Fla. 13th Cty. Ct. June 11, 2009). A lawsuit will be deemed premature unless the insurer is provided with notice of the exact amount due. *See Physical Therapy Group, LLC. v. Mercury Ins. Co. of Florida,* 13 Fla. L. Weekly Supp. 889c (Fla. 11th Cty. Ct. June 2, 2006). However, an insurer is not properly placed on notice if the wrong amount is stated in the demand letter. *See id.*; *see also Wide Open MRI v. Mercury Ins. Group,* 16 Fla. L. Weekly Supp. 513b (Fla. 17th Cir. Ct. March 13, 2009).

Notably, this Court addressed this same issue in *Fountain Imaging of West Palm Beach, LLC. v. Progressive Express Ins. Co.,* 14 Fla. L. Weekly Supp. 614a (Fla. 15th Cir. Ct. March 30, 2007). In *Fountain Imaging,* a situation arose analogous to the facts of the instant case. Fountain Imaging sought payment from Progressive for two MRIs obtained by an insured. In its presuit letter, however, it demanded an amount in excess of the Medicare Fee Schedule. This Court, citing to section 627.736(5)(b)(5), held that the amounts demanded by Fountain Imaging,

"as a matter of *law*, were not reasonable" and did not serve as proper notice to Progressive *Id.* (emphasis in original). The importance of strictly following the language of the statute was also addressed:

> Under Fountain Imaging's reading of the statute, it could claim any sum in excess of a reasonable amount that it wanted, leaving Progressive to correctly guess the reasonable amount and pay it in order to avoid penalties and fees. If an insurer refuses to pay medical expenses that an insured believes are reasonable, the insured may sue, but he or she bears the burden of establishing that the charges are, in fact, reasonable . . . Presumably, insurance companies will be deterred from making inaccurate assessments of reasonableness by the penalty they face if they lose in court -- payment of their policy holders' legal fees.

Id.

In the case at bar, the HCFA MRI Associates sent State Farm for $1,707.33 and $1,816.17, respectively for each MRI, was well in excess of the amount allowable under section 627.736(5). As evidenced by the record, State Farm responded to the HCFA with an itemized specification for each MRI stating why payment was being denied. The two-fold explanation specified that the two MRIs lacked medical necessity based on the Spinner Report and that the amount for each MRI exceeded the allowable amount under section 627.736(5). Upon receipt of State Farm's response to the HCFA denying the claim, MRI Associates sent its Presuit Demand Letter to State Farm. However, pursuant to section 627.736(11), the Presuit Demand Letter was sent prematurely. The Presuit Demand Letter cannot be sent until the payment is overdue. *See* § 627.736(11), Fla. Stat. (2006); *Fountain Imaging of West Palm Beach, LLC. v. Progressive Express Ins. Co.*, 14 Fla. L. Weekly Supp. 614a. Thus, the amount owed could not have been overdue because State Farm never received proper notice of the exact amount owed from MRI Associates. Even assuming *arguendo* that the Presuit Demand Letter was not sent prematurely,

the amounts listed in the Presuit Demand Letter for each MRI were still not accurate. Accordingly, the Presuit Demand Letter did not properly place State Farm on notice of the exact amount owed to MRI Associates as required by section 627.736(11) and as a result was invalid.

Therefore, the judgment of the court below is REVERSED and this action is REMANDED for entry of final summary judgment in favor of State Farm. State Farm's Motion for Appellate Attorney's Fees is GRANTED and the matter is remanded to the lower court to determine the reasonable amount thereof.

(HAFELE, BARKDULL, MARX, JJ. concur)