

IN THE CIRCUIT COURT OF THE NINTH JUDICIAL CIRCUIT,
IN AND FOR OSCEOLA COUNTY, FLORIDA

Florida Injury East, Inc., as
assignee of Charna Dovalus,

CASE NO.: 2015-AP-30
Lower Court Case No.:
2011-CC-2870-CL

Appellant,

v.

United Automobile Insurance Co.,

Appellee.

Appeal from the County Court,
for Osceola County, Florida,
Stefania C. Jancewicz, County Judge.

Jonathan D. Wilson, Esq., and
Peter A. Shapiro, Esq., for Appellant.

Michael J. Neimand, Esq.,
for Appellee.

Before WEISS, BARBOUR, and SHEPARD, J.J.

PER CURIAM.

Appellant, Florida Injury East, Inc., seeks review of the final summary judgment entered in favor of United Automobile Insurance Company. This Court has jurisdiction. § 26.012(1), Fla. Stat. (2015); Fla. R. App. P. 9.030(c)(1)(A). Because the trial court imposed an additional burden upon Florida Injury East in determining whether it timely submitted its claim for PIP benefits that is not contained in the PIP statute, we reverse.

From January 15 through April 18, 2011, Florida Injury East provided medical treatments to Charna Dovalus for injuries she sustained in a car accident. Dovalus assigned her PIP benefits to Florida Injury East and informed it that State Farm was her insurer. State Farm denied Florida

Injury East's claims, and on May 10, 2011, told Florida Injury East that the checks it previously sent regarding Dovalus's treatment were a mistake. On this same date, State Farm told Florida Injury East that it should get coverage through Dovalus's mother's PIP insurer.

On June 29, 2011, Dovalus's mother's PIP insurer, United Auto, called Florida Injury East and informed it that United Auto was the correct PIP carrier for claims for treatment to Dovalus. In early July 2011, Florida Injury East submitted its bills to United Auto along with an affidavit pursuant to the procedures in Florida Statute section 627.736(5)(c)(2) (2010). United Auto denied coverage, stating that the bills were untimely. Florida Injury East filed suit to recover the PIP benefits, but the trial court agreed with United Auto that the claim was untimely and entered summary judgment against Florida Injury East. Florida Injury East now seeks review of that judgment. "The standard of review of a trial court's entry of summary final judgment is de novo." *Evans v. McCabe 415, Inc.*, 168 So. 3d 238, 240 (Fla. 5th DCA 2015).

Florida Injury East argues that the trial court imposed a burden upon it not contemplated by the PIP statute. For support, Florida Injury East points to the phrase in the trial court's order stating that it is reasonable for Florida Injury East to "explore every reasonable avenue to avoid jeopardizing payment" (R. 268.)

To receive PIP benefits, a medical provider must submit its statement of charges to the insurer within thirty-five days of treatment. § 627.736(5)(c)1., Fla. Stat. (2010). The PIP statute provides a medical provider with an extension of time if the insured gave the provider inaccurate information regarding the PIP insurer, as happened in this case. Specifically, the statute states:

If, however, the insured fails to furnish the provider with the correct name and address of the insured's personal injury protection insurer, *the provider has 35 days from the date the provider obtains the correct information to furnish the insurer with a statement of the charges.* The insurer is not required to pay for such charges unless the provider includes with the statement documentary evidence that

was provided by the insured during the 35-day period demonstrating that the provider reasonably relied on erroneous information from the insured and either:

- a. A denial letter from the incorrect insurer; or
- b. Proof of mailing, which may include an affidavit under penalty of perjury, reflecting timely mailing to the incorrect address or insurer.

§ 627.736(5)(c)2. (emphasis added).¹

The trial court found that Florida Injury East knew United Auto was the pertinent PIP carrier on May 10, 2011, when State Farm told Florida Injury East that the mother's insurer was the correct carrier. Because Florida Injury East submitted its bill in early July 2011, more than thirty-five days after May 10, 2011, Florida Injury East's submission was untimely.

On May 10, 2011, however, Florida Injury East knew only that the correct PIP carrier was Dovalus's mother's PIP insurer. The trial court placed a burden on Florida Injury East to track down the correct coverage information. But neither the PIP statute nor case law contains this burden. Inserting this additional requirement in an otherwise unambiguous statute is improper. The trial court's order stating that the provider should "explore every avenue" is not contemplated in the statute and imposes a requirement on the provider that does not exist.

The PIP statute only requires the medical provider to act within thirty-five days of obtaining the correct information. Florida Injury East did this when it submitted its claim to United Auto on July 1, 2011, two days after learning that United Auto was the correct PIP insurer. Thus, Florida Injury East's claim was timely submitted to United Auto.

Based on the foregoing, it is hereby **ORDERED AND ADJUDGED** as follows:

1. The "Final Judgment," entered on September 21, 2015, is **REVERSED** and this matter is **REMANDED** for proceedings consistent with this opinion.

¹ There is no dispute that Florida Injury East complied with sub-subsections a and b of § 627.736(5)(c)2.

2. “Appellant’s Motion to Tax Appellate Attorneys’ Fees,” filed on February 5, 2016, is **GRANTED** contingent upon Florida Injury East prevailing under the insurance policy, and the assessment of those fees is **REMANDED** to the trial court.

DONE AND ORDERED in Chambers, at Kissimmee, Osceola County, Florida, on this 18 day of August, 2016.

/S/

KEVIN B. WEISS
Presiding Circuit Judge

BARBOUR and SHEPARD, J.J., concur.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Order has been furnished to: **The Honorable Stefania C. Jancewicz, Osceola County Judge**, Osceola County Courthouse, 2 Courthouse Square, Kissimmee, FL 34741; **Jonathan D. Wilson, Esq., and Peter A. Shapiro, Esq.**, The Law Offices of Peter A. Shapiro & Jonathan D. Wilson, 211 E. Livingston St., Orlando, FL 32801; and **Michael J. Neimand, Esq.**, House Counsel for United Automobile Insurance Co., P.O. Box 694260, Miami, FL 33269-9854; on this 18th day of August, 2016.

/S/

Judicial Assistant