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

CASE NO: 2015-027940-CA-01
SECTION: CA21
JUDGE: David C. Miller

MSPA CLAIMS 1, LLC
Plaintiff(s)

vs.

IDS PROPERTY CASUALTY INSURANCE COMPANY
Defendant(s)
_____/

ORDER GRANTING PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT AS TO THE ENTIRE CLASS SUBSEQUENT TO THE COURT'S CERTIFICATION OF THE CLASS PREDICATED ON PLAINTIFFS' SECOND AMENDED COMPLAINT FILED AS OF APRIL 1, 2019

THIS MATTER having come before the Court on Plaintiffs' Motion for Summary Judgment as to the Entire Class to be entered only after the Class Certification Motion is Considered ("**Motion**"), and being fully and duly advised in the premises, it is

ORDERED AND ADJUDGED that Summary Judgment is entered against the Defendant IDS Property Casualty Insurance Company ("IDS") in favor of the entire Class that encompasses:

> All non-governmental organizations (including, but not limited to MAOs, first-tier and downstream entities, and their assignees, collectively "Medicare Payers"), that provided Medicare benefits under Part C in the State of Florida to beneficiaries that were covered by IDS for No-Fault Benefits, for which IDS under a no-fault/PIP insurance policy had a primary obligation, and thus, had an affirmative duty to: (a) determine whether its insured were entitled to Medicare benefits under Part C to enable the proper coordination of benefits; (b) alert Medicare Payers of its primary obligation; and (c) prevent Medicare Payers from paying for accident-related medical items and services for which IDS has a primary obligation or reimburse them.

I. BACKGROUND

1. Plaintiffs sought summary judgment for declaratory relief under Chapter 86, Florida Statutes, for IDS' uniform failure to identify Medicare benefits under Medicare Part C and comply with their primary obligations as required by Section 627.736(4), Florida Statutes.
2. Section 627.736(4), Florida Statutes, states that "benefits due from an insurer under §§ 627.730-627.7405 are primary, except that benefits received under any workers' compensation law must be credited." *Id*. IDS' systemic failure to identify Medicare benefits under Part C caused Plaintiffs to pay for accident-related medical items and services for which IDS has a primary obligation for pursuant to Section 627.736 (4), Florida Statutes.
3. On or about January 13, 2014, the subject enrollee, a Medicare Beneficiary was injured while travelling in a motor vehicle (hereinafter referred to as "Accident"). [P.A.[1] 006131-006137, Pl.'s Composite. Ex. 1, M.A. Crash Report; Pls.' Second Am Compl. ¶ 9]. The Medicare Enrollee, also an IDS claimant, and thereby qualifying as an insured received medical services and treatment for injuries sustained and, consequently, incurred expenses for said medical care and treatment. [Pls.' Second Am Compl. ¶ 10].
4. IDS issued a policy of insurance to the Medicare Enrollee that provided Personal Injury Protection ("PIP") benefits in compliance with sections 627.730 – 627.7405, Florida Statutes. [P.A. 007711, Def.'s Answer to Am. Compl. ¶ 13; Pls.' Second Am Compl. ¶¶ 9-14]. This policy was in full force and effect at the time of the accident and provided primary insurance coverage for the enrollee's medical expenses resulting from the accident. [Pls.' Sec. Am Compl. ¶¶ 9-14; P.A. 007711, Def.'s Answer to Am. Compl. ¶ 14]. At the time of the accident, the IDS insured was also enrolled in a Medicare Advantage plan (an "MA Plan") administered by

FHCP, which provided Medicare benefits to the Medicare enrollee. [Pls.' Sec. Am Compl. ¶8]. As described in FHCP's evidence of coverage ("EOC"), the enrollee's MA Plan is considered the "secondary plan" in connection with medical expense coverage for the subject accident, and provided FHCP with reimbursement, recovery, and subrogation rights from a "primary plan", i.e., IDS. [P.A. 000132:13-19, 000145:17- 19, 000146:14-25, 000151:10-16, 000161:18-25, 000162:1, Helf Test. Sept. 26, 2016]. These rights are further described in the EOC and in the Code of Federal Regulations. [P.A. 007149-7368, Pl.'s Ex. 11 FHCP Evidence of Coverage; 42 C.F.R. § 411.24(e)].

5. On January 14, 2014, IDS was notified of its insured's accident, and as a result, opened a claim regarding this loss. Notably, IDS had a CMS-1500 form in its possession indicating that Florida Health Care Plus was the insurer and still chose not to coordinate benefits with the health insurer.[2] As admitted to by Jodi Helf , representative for Defendant at the evidentiary hearing, these claim forms are used by providers and suppliers to bill claims.[3] Forms such as the CMS-1500 go through an auto insurer's systems.[4] These forms get ingested, but Defendant failed to excise the populated data fields from the forms.[5] In fact, Defendant reported the enrollee's claim to the ISO ClaimSearch system, and thus, Defendant had actual knowledge that the enrollee was involved in the accident. [Pls.' Second Am. Compl. ¶¶ 11-14; Ex. F]. Despite this knowledge, IDS failed to ascertain whether their insured was entitled to Medicare benefits. [Pl.'s Second Am. Compl., Ex. G, Dep. Trans. of Jodi Helf, 103: 3-11.][6] Moreover, IDS knowingly and willfully[7] turned a blind eye and evaded its primary obligation when it received the Medicare enrollee's medical bills. [*Id*. at 75: 24-25 – 76:1-10].
6. IDS had a legal obligation to ascertain whether its insured was entitled to Medicare benefits to satisfy its primary obligation pursuant to Section 627.736(4), to ensure the proper coordination of benefits. The Section provides:

> PAYMENT OF BENEFITS. —Benefits due from an insurer under ss. 627.730-627.7405 are primary, except that benefits received under any workers' compensation law must be credited against the benefits provided by subsection (1) and are due and payable as loss accrues upon receipt of reasonable proof of such loss and the amount of expenses and loss incurred which are covered by the policy issued under ss. 627.730-627.7405.

627.736, Fla. Stat.

7. IDS failed to notify CMS or the Medicare Part C Payer (FHCP) that M.A. was insured under its no-fault/PIP policy, and that IDS had a primary obligation pursuant to Section 627.736(4), for M.A.'s accident-related medical items and services in compliance with Section 111. Admittedly, IDS conceded this point. IDS reported M.A.'s claim over a year after the date of the accident, and only because Plaintiffs alerted IDS of M.A.'s Medicare benefits under Part C. [Pl.'s Sec. Am. Compl., Ex. G, Depo. Trans. of Jodi Helf, 63: 16-25, 75: 15-23]. By failing to adhere to its statutory obligations, IDS failed to alert the secondary payer that it was liable and thereby preventing secondary payers from having to pay.
8. Due to IDS' common course of conduct of failing to report its primary obligation, pursuant to Section 627.736(4), to CMS in compliance with federal law, medical providers issued bills for payment to Plaintiff's assignor and the Class. More specifically, IDS caused FHCP to pay for M.A.'s accident-related medical items and services. FHCP paid $87,491.00 for M.A.'s accident-related medical items and services. [Pls.' Sec. Am. Compl., Ex. E]. Had FHCP known of IDS' primary obligation pursuant to Section 627.736(4), it would not have tendered those payments. IDS' illicit conduct is demonstrated by the M.A. example Plaintiffs set forth, but is applicable to the class as a whole.

II. THE LAW – LEGAL STANDARD

Plaintiffs moved for summary judgement pursuant to Rule 1.510 of the Florida Rules of

Civil Procedure, which states:

> A party may move for summary judgment, identifying each claim or defense—or the part of each claim or defense—on which summary judgment is sought. The court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law. The court shall state on the record the reasons for granting or denying the motion. The summary judgment standard provided for in this rule shall be construed and applied in accordance with the federal summary judgment standard.

Fla. R. Civ. P. 1.510(a) (effective May 1, 2021).

Summary judgment is appropriate where there is "no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law." Fla. R. Civ. P. 1.510(c); *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 247-48 (1986). As the moving party, Plaintiffs have the burden of establishing both the absence of a genuine material fact and that it is entitled to judgment as a matter of law. As the Court will explain, Plaintiffs have met both burdens.

III. ANALYSIS

A. Plaintiffs are Entitled to Summary Judgment on the Declaratory Judgment Claim

Florida's declaratory judgment statute, states:

> [a]ny person claiming to be interested or who may be in doubt about his or her rights under a deed, will, contract, or other article, memorandum, or instrument in writing or whose rights, status, or other equitable or legal relations are affected by a statute, or any regulation made under statutory authority, or by municipal ordinance, contract, deed, will, franchise, or other article, memorandum, or instrument in writing may have determined any question of construction or validity arising under such statute, regulation, municipal ordinance, contract, deed, will, franchise, or other article, memorandum, or instrument in writing, or any part thereof, and obtain a declaration of rights, status, or other equitable or legal relations thereunder.

§ 86.021, Fla. Stat.

As such, courts "may render declaratory judgments on the existence, or nonexistence: (1) of any immunity, power, privilege, or right; or (2) Of any fact upon which the existence or nonexistence of such immunity, power, privilege, or right does or may depend, whether such immunity, power, privilege, or right now exists or will arise in the future. Any person seeking a declaratory judgment may also demand additional, alternative, coercive, subsequent, or supplemental relief in the same action." § 86.011, Fla. Stat. An action seeking a declaratory judgment requires the plaintiff to show "there is (1) a bona fide adverse interest between the parties concerning a power, privilege, immunity or right of the plaintiff; (2) the plaintiff's doubt about the existence or non-existence of his rights or privileges; (3) that he is entitled to have the doubt removed." *Grove Isle Ass'n, Inc. v. Grove Isle Assocs., LLLP*, 137 So.3d 1081, 1093 (Fla. 3d DCA 2014).

Here, Plaintiff established through substantial competent evidence in the record that the facts were undisputed: M.A. was a Medicare Beneficiary, that IDS was a primary payer that failed to pay for M.A.'s medical expenses as required and failed to provide CMS notice of IDS primary payers obligations as well as FHCP or its assignor that establishes that a bona fide present controversy exists between Plaintiffs (the Class) and Defendant IDS concerning the proper interpretation of Section 627.736(4), and the parties' respective rights and obligations thereunder as it relates to the obligations of the Defendant IDS. Plaintiffs have established that Defendant IDS, as a primary payer, had an affirmative duty to, inter alia: (a) determine whether its insureds were entitled to Medicare benefits under Part C to enable the proper coordination of benefits; (b) alert Medicare Payers of its primary obligation pursuant to Section 627.736(4), Florida Statutes; and (c) prevent Medicare Payers from paying for accident-related medical items and services for which Defendant IDS has a primary obligation or otherwise alerted the secondary payers that IDS had an obligation to reimburse them. *Order Granting Plaintiffs' Motion for Class Certification as it Pertains to the Second Amended Complaint* ("Order Granting Class Certification") at 18-21.

The rights, status, or other equitable or legal relations of the parties are affected by Section 627.736(4), Florida Statutes. This section states that "benefits due from an insurer under sections 627.730-627.7405 are primary, except that benefits received under any workers' compensation law must be credited." *Id.* IDS' common course of conduct and systematic failure to identify Medicare benefits under Part C has caused Plaintiffs (and the Class) to pay for accident-related medical items and services for which IDS has a primary obligation pursuant Section 627.736 (4). On a class wide basis IDS failed to: (a) determine whether Medicare Beneficiaries were entitled to Medicare benefits under Part C to enable the proper coordination of benefits; (b) alert Medicare Payers of its primary obligation pursuant to Section 627.736(4); and (c) prevent Medicare Payers from paying for accident-related medical items and services for which IDS has a primary obligation. Indeed, as a result of a various orders compelling discovery to match data, which IDS willfully violated, the Court sanctioned IDS. *See Order Granting Plaintiffs' Motion for Order to Show Cause and for Sanctions Against Defendant* ("Order for Sanctions"). Through the data matching process which occurred during the litigation, as referenced above, IDS failed and continues to fail to properly obtain and maintain the necessary data to properly report in many instances.

Plaintiffs (and the Class) are unable to know when they have reimbursement rights, and IDS does nothing to advise them of their rights. This results in the obvious, primary payers like IDS failing to reimburse parties such as Plaintiffs (and the Class), all of which harms the fiscal integrity of the Medicare Trust Fund.[8] Due to IDS' failure to comply with its obligations, medical providers issued bills for payment to FHCP for M.A.'s accident-related medical items and services and FHCP paid $87,491.00 for M.A.'s accident-related medical items and services.

B. **The Facts are Undisputed**

There is no dispute regarding any of the material facts alleged by Plaintiffs. *See* Order Granting Class Certification. These facts admitted or are supported by the deposition testimony,

testimony at the trial certification hearing and documents in evidence. *Id.* As Plaintiffs (and the Class) are in doubt as to their rights, and IDS' obligations, under Section 627.736(4), Florida Statutes, declaratory relief is necessary to establish uniform standards of conduct for IDS and to protect Plaintiffs' (and the Class') rights. *Id.* at 26.

On August 6, 2018, this Court issued an Order which compelled IDS to produce electronic data. Specifically, the Order required IDS to provide to Plaintiffs, within 20 days, the following information in electronic form: (1) first name; (2) last name, (3) date of birth; and (4) Social Security Number or Health Information Claim Number ("HIC") or MBI Number, when available. *See*, Order Granting Motion to Compel Discovery. In response to the Order, IDS produced 6,895 rows of data rife with inaccuracies and inconsistencies and failed to provide data that IDS has admitted under oath they have and maintain. *See*, August 1, 2020, Motion for Order to Show Cause, Exhibit C, *MSP's Data Analysis*.

On May 21, 2020, Plaintiffs filed a Motion to Compel Defendant's Production of Electronic Data in Compliance with the Court's August 6, 2018 Order (the "Motion to Compel Electronic Data"). On May 28, 2020, this Court held a hearing on Plaintiffs' Motion to Compel Electronic Data. On June 18, 2020, the Parties entered into an order, which, again, granted Plaintiffs' motions to compel (the "June 18, 2020 Order"). Plaintiffs also served IDS with a Request for Admissions to confirm the data discrepancies that Plaintiffs found. Motion at 5. On July 29, 2020, IDS responded to Plaintiffs' Second Request for Admissions for Class Discovery, whereby they admit that, of the 6,895 claims IDS produced, 259 claim numbers did not include a birth date, 3101 did not have Social Security numbers, and 5942 did not include a Health Insurance Claim number. *See Id.*, IDS Admissions. Such admissions by IDS demonstrates that IDS is in violation of its primary payer obligations by virtue of their own admissions that they do obtain Social Security Information and dates of birth. In fact, both state and federal laws mandate that IDS obtain this data for coordination purposes.

On August 12, 2020, Plaintiffs and ISO entered into an agreed order requesting that ISO run an extraction from its ISO ClaimSearch® database and provide the following data fields and populated data within those fields pertaining to IDS: no-fault, PIP, or Med Pay Claims in Florida from December 2, 2009 through the date that ISO extracts the data as follows: (1) Insuring Company; (2) Claim Number; (3) Date/Time of Loss; (4) Policy Number; (5) Policy Type; (6) Company Received Date; (7) Location of Loss; (8) Involved Party (individual involved in claim), including: (i) name, (ii) address, (iii) Date of Birth ("DOB"); (iv) gender; (v) state; and (vi) SSN (last 4 digits); (9) Alleged injury; (10) Coverage type; and (11) Loss Type.

The ISO file provided in response to the agreed order contained 8,544 records. *See,* Decl. of Chris Miranda June 17, 2021.This file also contained several deficiencies including 301 records that were not associated with a Date of Birth value, 3,310 records that were not associated with a SSN value, and another 423 records that contained SSN values with fewer than four digits. *Id*. Even where the same record was produced there were often key differences in the values provided: 29 records contained dates of birth in the ISO production where no Date of Birth was provided in the IDS production, and 253 contained SSN information in the ISO records where no SSN information was provided in the IDS production. *Id.*

Using the two data sets, Plaintiffs created an enhanced set of records for purposes of data matching. *Id*. On October 23, 2020, Plaintiffs completed the preliminary analysis of member matches and identified 431 member matches. *Id*. IDS subsequently returned 408 members with Policy information. *Id.* Of those 408 members 132 had claims within the first two years of the date of accident and were covered under a PIP policy. *Id.*

Accordingly, Plaintiffs have shown that there is no genuine issue of material facts that IDS is not fulfilling its primary payer obligations necessary to coordinate benefits, and as such, summary judgment for declaratory relief is appropriate.

IV. CONCLUSION

For the foregoing reasons, it is:

ORDERED AND ADJUDGED as follows:

1. As the Motion for Class Certification has already been granted by this Court, the Motion for Summary Judgment is **GRANTED** on a class wide basis for declaratory relief under Chapter 86, Florida Statutes, for IDS' failure to comply with its primary obligation pursuant to Section 627.736(4) and failure to comply with Section 111 reporting requirements pursuant to U.S.C. § 1395y(b)(7)-(9).
2. Final Judgment will be issued by separate order, with the Court retaining jurisdiction to award fees and costs.
3. Pursuant to Rule 23(b)(1)(A) and (b)(2), Plaintiffs' Class is a NON-OPT OUT class that does not require notice to the Class. Nevertheless, Plaintiffs have offered to provide Notice. A copy of the Notice that Plaintiffs intend to provide will be submitted to the Court within twenty (20) days of the entry of this order for the Court's review.
4. The Court hereby further finds that Plaintiffs are entitled to attorneys fees pursuant to 627.428, Florida Statutes, and the rules regulating class actions. The Court shall set those fees at a subsequent hearing and hereby reserves jurisdiction to award the amount of costs and attorneys fees.

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[1] Any reference to P.A. throughout this Order shall indicates a reference to Plaintiffs' Appendix.

[2] P.A. 000150:1-9 (Class Cert. Hear. Trans., 9/26/2016, Helf Test.).

[3] "Professional Paper Claim Form (CMS-1500" https://www.cms.gov/Medicare/Billing/ElectronicBillingEDITrans/1500 (last visited on Aug. 4, 2021); P.A. 000232:12-22 (Class Cert. Hear. Trans., 9/26/2016, Blanco Test.).

[4] P.A. 000232:12-22 (Class Cert. Hear. Trans., 9/26/2016, Blanco Test.).

[5] P.A. 000273:19-274:19 (Class Cert. Hear. Trans., 9/26/2016, Blanco Test.).

[6] The unrebutted testimony presented at the certification hearing on MSPA's first motion for class certification further demonstrates IDS was aware of its primary obligation under section 627.736, Florida Statutes, and of its duty to ascertain whether an insured seeking medical care for injuries sustained as a result of an automobile accident was a Medicare beneficiary at the time of the accident. [P.A. 000128:11-15, 000132:13-19, Helf Test., Sept. 26, 2016].

[7] Indeed, this Court ordered sanctions against Defendant for failing to comply with its prior order to show cause and for displaying a "willful indifference at least or a willful decision not to seek all databases available for the purpose of coming up with all of the information . . . ." [July 30, 2021 Hear. Trans. at p. 100:12-19].

[8] *In re Avandia Mktg. Sales Practices & Prod. Liab. Litig.*, 685 F.3d 353, 365 (3d Cir. 2012) (The "Medicare Trust Fund . . . achieve[s] cost savings" when MAOs "recover efficiently from primary payers" through recovery actions like this one).

DONE and **ORDERED** in Chambers at Miami-Dade County, Florida on this 6th day of August, 2021.

2015-027940-CA-01 08-06-2021 6:43 AM
Hon. David C. Miller

CIRCUIT COURT JUDGE
Electronically Signed

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

CLERK TO **RECLOSE** CASE IF POST JUDGMENT

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