

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

CASE NO.

ERA LOWRY, individually and on behalf of all  
others similarly situated,

Plaintiff,

vs.

STATE FARM MUTUAL AUTOMOBILE  
INSURANCE COMPANY,

Defendant.

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**CLASS ACTION COMPLAINT**

Plaintiff, Era Lowry (“Plaintiff”) by and through her undersigned attorneys, bring this Class Action Complaint against the Defendant, State Farm Mutual Automobile Insurance Company (“Defendant”) and alleges:

**STATEMENT OF THE CASE**

1. Plaintiff brings a claim for declaratory relief (Count I) brought on behalf of a class asking among other things that the Court to declare that parts of Section 627.736, Florida Statutes (the “PIP” statute), unconstitutional both facially and as applied to the Plaintiff and the putative class.

2. Count I does not seek monetary damages on behalf of the class, and Plaintiff will never seek monetary damages on behalf of the class.

3. Plaintiff brings this case because Defendant as a general business practice, has been systematically and routinely denying all PIP claims when the person injured in an

automobile collision does not receive initial treatment within 14 days of the accident. Plaintiff understands that Defendant bases these denials on recent changes to Section 627.736, Florida Statutes, as amended by Chapter 2012-197, Laws of Florida (the “2012 PIP Amendments”), which added a 14-day prerequisite to PIP coverage.

4. After the effective date of these amendments, a person injured in an automobile collision is completely precluded from PIP coverage and benefits if they do not initially receive services or care within 14 days of the automobile collision.

5. Plaintiff alleges that the 14-day prerequisite to PIP coverage is unconstitutional, and as such Defendant cannot and has not lawfully denied PIP claims of insureds and their assignees, including Plaintiff and class members.

#### **PARTIES**

6. Plaintiff has satisfied all conditions precedent prior to filing this Complaint.

7. Plaintiff sent Defendant a demand letter (relating to Count II) pursuant to Florida Statutes Section 627.736 (10). A copy of the Demand Letter is attached hereto as **Exhibit “A”**.

8. The value of the putative class claims in the aggregate exceed \$5,000,000.00 exclusive of all costs and attorney’s fees.

9. Plaintiff is an individual Alabama citizen and at all times has been *sui juris*. The events giving rise to the complaint occurred while she resided in and was a citizen of Florida.

10. Defendant is a foreign corporation and citizen of a state other than Florida, and at all times material, the Defendant did and continues to do substantial business in Broward County, Florida, including selling insurance, advertising, and maintaining offices and representatives here.

11. This case arises under Florida law.

12. All members of the class or class members including Plaintiff are citizens of Florida.

13. Subject matter jurisdiction is proper in this action based on 28 U.S.C. § 1332.

14. The Court has personal jurisdiction over Defendant and venue is proper here because it markets, issues, and sells automobile insurance throughout the State of Florida, is registered to do business including transact insurance business in Florida, and is engaged in substantial, continuous, systematic, and non-isolated insurance business activity within the State of Florida, including Broward County, Florida.

### **BACKGROUND**

15. The 2012 PIP amendments entirely changed the PIP landscape in Florida and the status of no-fault as a reasonable tort alternative. The relevant portions of these amendments altered Section 627.736(1), Florida Statutes (2012), relating to personal injury protection (“PIP”) coverage. *See* Ch. 2012–197, § 10, Laws of Fla., effective January 1, 2013.

16. Motor vehicle operators must still carry \$10,000 in PIP insurance. § 627.733, Fla. Stat. Under subparagraphs 1 and 2 of Section 627.736(1)(a), Florida Statutes, PIP policies must still provide benefits for “[e]ighty percent of all reasonable expenses for medically necessary medical, surgical, X-ray, dental, and rehabilitative services”...including a host of “initial services” and “followup services;” and insurance benefit limits remain at \$10,000.

17. But now, according the 2012 PIP Amendments, the long-standing \$10,000 in medical expense is available *only if* the insured “receives initial services and care...within 14 days after the motor vehicle accident.” § 627.736(1)(a), Fla. Stat.

**GENERAL ALLEGATIONS**

18. The individual action in this Complaint arises from the circumstances surrounding an automobile collision in Florida whereby Plaintiff sustained personal injuries.

19. As a direct and proximate result of the injuries from the above described collision, Plaintiff incurred reasonable expenses for necessary medical services or care, including, but not limited to, medical services or care provided by Scenic Health Alliance, Inc. (“SHA”).

20. Defendant issued Plaintiff a PIP insurance policy for the above described collision.

21. This insurance policy and all endorsements and addenda are based on standardized forms that are readily identified by alpha-numeric coding. Upon information and belief, Defendant maintains searchable electronic records identifying the personally identifying information and policies of insureds and tracking their claims and denials.

22. A copy of the operative policy is attached hereto and incorporated herein as **Exhibit “B”**.

23. The above described insurance contract was in full force and effect at all times material and provides PIP coverage and medical benefits for services provided to Plaintiff due to injuries suffered in the automobile collision.

24. SHA preformed medically necessary services, as defined under Florida Statutes and the insurance policy issued by Defendant to Plaintiff as a result of an automobile collision for which the Defendant provided Personal Injury Protection coverage.

25. SHA furnished Defendant with the medical bill(s) and supporting documentation to establish the reimbursement for the reasonable and necessary services that it rendered to LOWRY in the total amount of \$8,628.00. Lowry is entitled to \$2,000.00 of the amount billed

and she has sent a statutory demand to State Farm for that amount which is attached hereto (Exhibit A). This demand also seeks to have the Defendant remedy the declaratory relief requested in this complaint individually and on behalf of the entire class.

26. Defendant denied payment of any benefits by claiming that Plaintiff did not receive services or care for the injuries she suffered in the covered automobile collision within 14 days of the automobile collision. A copy of an exemplar of Defendant's standardized Explanation of Review is attached hereto as **Exhibit "C"**.

27. As a general business practice, since at least January 1, 2013, Defendant would and does systematically and routinely deny the claims of its insureds and their assignees in Florida because the insured did not receive services or care for the injuries suffered in the automobile collision within 14 days of the automobile collision. Defendant routinely denied and continues to deny these claims issuing pro forma Explanations of Review with Reason Code SF793 or a combination of Reason Code SF 793 and SF 493, corresponding to the 14-day requirement as a reason for denial of the claim.

28. Plaintiff contends that the portions of Section 627.736, Florida Statutes, that permit limitation on payment of medical bills unless initial treatment is first obtained within 14 days of an automobile collision are a violation of the due process, equal protection, and access to courts provisions of the Florida Constitution. Defendant contests Plaintiff's position on the constitutionality of the 14-day threshold both factually and legally, and Plaintiff and Defendant have a significant, current dispute about the factual and legal basis and justifications for the threshold.

**CLASS REPRESENTATION ALLEGATIONS**

29. Pursuant to Federal Rules of Civil Procedure 23(a) and 23(b)(2) or 23(b)(3), LOWRY brings their declaratory judgment claim in Count I on behalf of a class of persons who have submitted claims for medical services where Defendant denied payment because the initial services and care for the injured insured was not rendered within 14 days of the automobile collision.

30. This class consists of and is defined as:

All persons who are insured with STATE FARM under PIP insurance coverage for services or care and all persons who are insured under those same policies, where STATE FARM denied any payments and solely utilized Reason Code SF793 or a combination of Reason Code SF 793 and SF 493 as an explanation for denial. This class specifically does not include any person where any payments were made under the PIP portion of the Policy.

31. **Numerosity Rule 23(a)(1)**: Plaintiff alleges, on information and belief, that the number of class members is so numerous that joinder of them is impractical. Plaintiff's belief is based on discovery indicating that Defendant has a general business practice of failing to pay persons similarly situated to the Plaintiff the amounts required under Florida law based on the 14-day requirement.

32. The members of the class will be easily ascertained through Defendant's records with additional discovery and will consist of all health care providers and insureds who submitted claims for PIP benefits who were denied payment in full or in part based on the insured not receiving initial services or care within 14 days of an automobile collision. This process will also be simplified because Defendant, as a general business practice, utilized a uniform Reason Code SF793 or a combination of Reason Code SF 793 and SF 493, whenever it

denied a claim on that basis and Defendant maintains searchable electronic records indicating its policyholders, their claims, and the reasons for any denials.

33. **Commonality Rule 23(a)(2)**: Plaintiff raises questions of law or fact that are common to the class as a whole. Plaintiff is not asking the Court to assess the reasonableness or medical necessity of any bill or claim of any class member, and Plaintiff is not seeking monetary damages for the Class. Common issues of fact or law among Plaintiff and Class Members include:

- a. Whether Defendant has been denying payments for PIP benefits because the insured did not initially receive services or care for injuries sustained in the automobile collision within 14 days of the collision;
- b. Whether the PIP provisions of Florida Statutes relating to the limitations of payments unless their initial treatment for injuries is received within 14 days of the collision violate the due process, equal protection, or access to courts provisions of the Florida Constitution; and,
- c. Whether Plaintiff and all those similarly situated are entitled to declaratory relief related to Defendant's conduct.

34. **Typicality Rule 23(a)(3)**: Plaintiff's declaratory relief claims are typical of the claims that would be asserted by other members of the class in that: each is insured under a standardized PIP policy issued by Defendant; each had a claim denied based on failure to satisfy the 14-day threshold, which STATE FARM can readily identify; and each class member will claim and assert similar declaratory relief for the wrongful denial by STATE FARM.

35. **Adequacy Rule 23(a)(4)**: The Class Representatives is a Florida Citizen who will fairly and adequately protect and represent the interests of each member of the class.

Additionally, the Class Representative is fully cognizant of her responsibility as class representative and retained counsel highly experienced counsel in PIP and class litigation, fully capable of, and intent upon, vigorously pursuing the action.

36. **Rule 23(b)(2)**: STATE FARM's actions, as alleged in Count I, are generally applicable to the class as a whole thereby making declaratory and injunctive relief to the entire class particularly appropriate for Count I under Florida Rule of Civil Procedure 1.220(b)(2).

37. **Rule 23(b)(3)**: If the Court chooses not to certify this class under (b)(2) then the Court should certify this class under (b)(3) because the above stated questions of law or fact common to the Class Representative's claim under Count I and the claim of each member of the class as described above predominate over any questions of law or fact affecting only individual members of the class. Moreover, class representation is clearly superior to other available methods for the fair and efficient adjudication of this controversy. Accordingly, and in the alternative to certification under (b)(2), Count I should be certified under Florida Rule of Civil Procedure Rule 1.220(b)(3).

### **COUNT I – DECLARATORY RELIEF**

38. Plaintiff, LOWRY re-alleges Paragraphs 1-37 as previously stated herein and further allege:

39. Count I seeks no monetary relief and is brought on behalf of a class defined above. Under Count I, Plaintiff Lowry is not requesting and will not request the Court to determine the reasonableness of any bill or charge or whether treatment is medically necessary.

40. Plaintiff, individually, and on behalf of all those similarly situated, is in doubt as to their rights under the contract of insurance and under Section 627.736, Florida Statutes, as it relates to the payment of PIP benefits when claims are submitted for services and care rendered

to an insured when initial services or care is rendered more than 14 days after an automobile collision.

41. Plaintiff, both individually and on behalf of all those similarly situated, asserts that, pursuant to Defendant's insurance policy, they are entitled to payment for PIP or entitled to ensure that benefit payments are made *regardless of when an insured receives initial services or care* because the statutory provisions purportedly permitting an insurance company to deny claims where the initial treatment was not rendered within 14 days of the automobile collision violate the due process, equal protection, or access to courts provisions of the Florida Constitution.

42. On the other hand, Defendant has demonstrated, as a general, systematic business practice and procedure, that unless services or care is initially rendered for an insured within 14 days of an automobile collision, it can and will deny payment for services or care rendered more than 14 days after the collision and will do so on a going forward basis.

43. There is a genuine dispute between the parties that requires a judicial declaration of rights under the policies of insurance and under Section 627.736, Florida Statutes, as to whether Defendant is permitted to deny payments, in part or in full, based on the fact that an insured did not receive initial services or care for the automobile collision within 14 days of the automobile collision.

44. As stated above, Defendant has applied the 2012 PIP Amendments routinely and systematically in an unconstitutional manner and that these new limitations are substantively unconstitutional. As a corollary, Defendant's Policies cannot lawfully incorporate the 14-day prerequisite; and Defendant cannot lawfully deny or limit claims, for PIP based on the 14-day prerequisite.

45. Pursuant to Section 86.021, Florida Statutes, at all times material, Lowry is “interested” in a PIP insurance contract, validity of the PIP statute, and has “equitable or legal relations [that] are affected by a ... [the PIP] statute..[or] contract.” Accordingly, standing is conferred on her to bring a claim for declaratory relief to determine the construction or validity of the contract or statute. Moreover, both Lowry requests declaratory relief “to settle and to afford relief from insecurity and uncertainty with respect to rights, status, and other equitable or legal relations.” § 86.101, Fla. Stat.

46. Plaintiff has retained the undersigned law firms to represent it in this action and has agreed to pay a reasonable fee for said services.

47. Pursuant to Sections 627.428, 627.736(9), and 86.061, Florida Statutes, Plaintiff is entitled to recover from Defendant reasonable attorney’s fees for pursuing the claim for declaratory relief against the insurer, Defendant.

48. Pursuant to Sections 57.011 and 86.081, Florida Statutes, Plaintiff is entitled to recover costs from the Defendant for pursuit of this action.

WHEREFORE, under Chapter 86, Florida Statutes, and 28 U.S.C. § 2201 Plaintiff, individually and on behalf of all others similarly situated, requests this Honorable Court to construe and declare Plaintiff’ and Class Members’ rights under Sections 627.736 and 627.736(5), Florida Statutes, and the applicable policy of insurance, and:

- a. Find and declare STATE FARM as a general business practice denies payment on claims under PIP because an insured did not receive initial services or care for injuries sustained in the automobile collision within 14 days of the collision;
- b. Declare that the provisions of Florida Statutes relating to limiting payment for claims unless initial treatment is rendered within 14 days of an automobile accident violate

- the due process, equal protection, or access to courts provisions of the Florida Constitution;
- c. As a result, declare that STATE FARM under its policy and Florida Statutes cannot lawfully deny payments or claims, under PIP for Plaintiff, and all those similarly situated Class Members, because the insured did not receive initial services or care within 14 days of the automobile collision;
  - d. As relief supplemental to the foregoing declarations, issue an order requiring STATE FARM to adjust all of the claims that were submitted where STATE FARM refused to pay benefits because the insured did not receive their initial medical treatment within 14 days of the accident;
  - e. Declare that Plaintiff and the Class are entitled to, and award them, reasonable attorney's fees and costs for bringing this action pursuant Sections 627.428 and 627.736(9), 57.041, and 86.081, Florida Statutes; and
  - f. Award any other relief this Court deems just and proper.

**COUNT II – BREACH OF CONTRACT/PIP BENEFITS  
FOR LOWRY INDIVIDUALLY**

49. Plaintiff re-alleges Paragraphs 1-7, 9-11, 13-26, 28, as previously stated herein and further alleges:

50. This Count does *not* assert claims on behalf of the class and is brought by LOWRY on an individual basis only.

51. Insurance policies are contracts, and the policy at issue was a contract maintained in full force and effect at times material.

52. As part of the insurance contract with Plaintiff, Defendant was required to pay PIP benefits.

53. As stated above, STATE FARM has applied the 2012 PIP Amendments in an unconstitutional manner and the 14-day limitation is substantively unconstitutional. As a corollary, Defendant's policies, cannot lawfully incorporate the 14-day prerequisite; and Defendant cannot lawfully deny or limit claims based on the 14-day prerequisite.

54. Defendant breached Plaintiff's policy of insurance when it failed to make timely payment of LOWRY's properly submitted PIP claims, as promised and as required by Defendant in the above insurance contract and as required by Section 627.736, Florida Statutes, by rejecting the claim because initial medical treatment was not rendered within 14 days of the accident.

55. As a result of the foregoing breach, Defendant has caused damage to Plaintiff, and Defendant has failed to pay the statutory penalty interest pursuant to Florida Statutes Section 627.736(4)(c).

56. The Plaintiff is entitled to prejudgment interest.

57. Defendant's failure to make timely and correct payments of the PIP benefits, and to satisfy the Defendant's obligations under the PIP insurance policy and the applicable PIP law incorporated into the insurance policy, has also resulted in Plaintiff's retaining the undersigned law firms to enforce Defendant's obligations under the above insurance contract.

58. Pursuant to Sections 627.736(9) and 627.428, Florida Statutes, Plaintiff is entitled to attorney's fees and costs for prosecuting this action.

59. Plaintiff would derive a direct benefit from the Court's judgment ordering Defendant to pay interest and attorney's fees, even if Defendant pays all or some of the disputed PIP benefits before judgment is entered.

WHEREFORE, Plaintiff, LOWRY, on an individual basis only, requests judgment against Defendant for damages, penalty interest, prejudgment and post-judgment interest, costs

and attorney's fees pursuant to Section 627.428, Florida Statutes, and any other further relief this Honorable Court may deem just and proper.

Dated: October 26, 2018

Respectfully submitted,

s/Edward H. Zebersky

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