

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO.: 16-cv-62610-BLOOM/Valle

A&M GERBER CHIROPRACTIC LLC, A/A/O
CONOR CARRUTHERS, ON BEHALF OF
ITSELF AND ALL OTHERS SIMILARLY
SITUATED,

Plaintiffs,

v.

GEICO GENERAL INSURANCE COMPANY,

Defendant.

**DEFENDANT'S STATEMENT OF MATERIAL FACTS IN SUPPORT OF
DEFENDANT'S MOTION FOR PARTIAL SUMMARY JUDGMENT**

Pursuant to Local Rule 56.1, Defendant GEICO General Insurance Company (GEICO) submits this Statement of Material Facts in support of Defendant's Motion for Final Summary Judgment:

1. Conor Carruthers was insured under a policy with GEICO which provided personal injury protection (PIP) motor vehicle insurance benefits. ECF No. [67-1] at 12-18, 29-39, 51-52.

2. Carruthers' policy contained an attached amendment form FL PIP (01-13), which stated in pertinent part:

Medical benefits are subject to the following limitations:

(a) Reimbursement for services and care provided in paragraphs (a), (b) or (c) of the definition of medical benefits up to \$10,000 if a physician licensed under Florida Statutes, chapter 458 or chapter 459, a dentist licensed under Florida Statutes, chapter 466, a physician assistant licensed under chapter Florida Statutes, chapter 458 or chapter 459, or an advanced registered nurse practitioner

licensed under Florida Statutes, chapter 464 has determined that the injured person had an emergency medical condition.

(b) Reimbursement for services and care provided in paragraphs (a), (b) or (c) of the definition of medical benefits is limited to \$2,500 if any provider listed in paragraphs (a), (b) or (c) of the definition of medical benefits determines that the injured person did not have an emergency medical condition.

ECF No. [67-1] at 32.

PAYMENTS WE WILL MAKE

The Company will pay in accordance with the Florida Motor Vehicle No Fault Law (as enacted, amended, or newly enacted), and where applicable in accordance with all fee schedules contained in the Florida Motor Vehicle No Fault Law, to or for the benefit of the injured person:

(A) Eighty percent (80%) of *medical benefits* which are *medically necessary*, pursuant to the following schedule of maximum charges contained in the Florida Statutes § 627.736(5)(a)1., (a)2. and (a)3.:

...

6. For all other medical services, supplies, and care, 200 percent of the allowable amount under:

(I.) The participating physicians fee schedule of Medicare Part B, except as provided in sub-sub-subparagraphs (II) and (III).

...

A charge submitted by a provider, for an amount less than the amount allowed above, shall be paid in the amount of the charge submitted.

ECF No. [67-1] at 31.

3. Carruthers' policy also contained an attached "Important Notice Fee Schedule Endorsement" M608 (01-13) which stated in pertinent part:

The Company will limit reimbursement of medical expenses to 80 percent of a properly billed reasonable charge, but in no event will the Company pay more than 80 percent of the following schedule of maximum charges:

...

6. For all other medical services, supplies, and care, 200 percent of the allowable amount under:

(I.) The participating physicians fee schedule of Medicare Part B, except as provided in sections (II.) and (III.)

ECF No. [67-1] at 51.

4. GEICO issued or mailed Endorsement M608 (01-13) in compliance with Florida Statute 627.736 and Florida HB119 to its policyholders as an attachment to all new policies effective on or after January 1, 2013 and as an attachment to all renewal policies effective on and after January 1, 2013. *See* Exhibit A to Defendant's Motion for Summary Judgment – Affidavit of Danielle Franklin dated June 30, 2017 at ¶ 4.

5. On or about March 18, 2015, Carruthers was involved in a motor vehicle accident and sought medical services from Plaintiff, A&M Gerber Chiropractic, LLC (Gerber). ECF No. [23] at ¶ 12-13.

6. Gerber charged GEICO \$60.00 four times for services billed under CPT code 97110 and GEICO paid \$48.00 per charge which was 80% of Gerber's charges. ECF No. [23] at ¶ 14.

7. Gerber also charged GEICO \$45.00 one time for services billed under CPT code 97140 and GEICO paid \$36.00 which was 80% of Gerber's charge. ECF No. [23] at ¶ 15.

8. In total, Gerber's complaint alleges that GEICO paid Gerber \$57.00 less than the policy required. ECF Nos. [23] at ¶¶ 12-14, [23-2] at 1, 4-5, 7-8.

9. GEICO did not receive a medical report diagnosing Carruthers with an emergency medical condition (EMC) related to the March 18, 2015 accident. *See* Exhibit B to Defendant's Motion for Summary Judgment – Affidavit of Catherine Fuhrman at ¶ 5.

10. GEICO paid Gerber a total of \$7311.85 in benefits on Carruthers' policy based on the March 18, 2015 accident. *See* Exhibit B to Defendant's Motion for Summary Judgment – Affidavit of Catherine Fuhrman at ¶ 6.

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11. Thus, GEICO paid Gerber \$4,811.85 more than Carruthers' \$2500 policy limit. ECF No. [67-1] at 32; Exhibit B to Defendant's Motion for Summary Judgment – Affidavit of Catherine Fuhrman at ¶ 5-6.

12. Thereafter, Gerber filed the instant class action suit, claiming that GEICO misapplied the 20% copayment to several charges. ECF No. [23] at ¶¶ 11-16, 36-37.

Respectfully submitted,

Counsel for Defendant

s/ Peter D. Weinstein

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CERTIFICATE OF SERVICE

WE HEREBY CERTIFY that on **July 6, 2017**, a true and correct copy of the foregoing was served, via electronic mail, upon the persons on the attached service list.

/s Peter D. Weinstein, Esq.

Attorney for Defendant

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