

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

SECURITY NATIONAL
INDEMNITY COMPANY,

CASE NO.: 2017-CV-000135-A-O
Lower Case No.: 2016-SC-004834-O

Appellant,

v.

PAN AM DIAGNOSTIC SERVICES,
INC., d/b/a PAN AM DIAGNOSTIC
OR ORLANDO a/a/o Crystalyn Wells,

Appellee.

Appeal from the County Court,
for Orange County, Florida,
David P. Johnson, County Judge.

Anthony J. Parrino, Esq., and
Jennifer W. Opiola, Esq.,
for Appellant.

Chad Barr, Esq.,
for Appellee.

Before H. RODRIGUEZ, BLACKWELL and WHITEHEAD, JJ.

PER CURIAM.

Appellant Security National Indemnity Company (“SNIC”) timely appeals the county court’s “Order on Plaintiff’s Motion for Final Summary Judgment” in favor of Appellee, Pan Am Diagnostic Services (“Pan Am”), and the ensuing “Amended Final Judgment.”¹ We reverse and remand for further proceedings.

¹ This Court has jurisdiction pursuant to section 26.012(1), Florida Statutes, and Florida Rule of Appellate Procedure 9.030(c)(1)(A). We dispense with oral argument. Fla. R. App. P. 9.320.

In 2012, SNIC issued an automobile insurance policy to Crystalyn Wells. After Wells was injured in a car accident, Pan Am, a medical services provider, treated her. Pan Am then sought reimbursement for this treatment from SNIC under Wells' Personal Injury Protection (PIP) coverage in the amount of \$2,150. Pursuant to SNIC's PIP medical-payments policy limitations, SNIC paid \$853.02 of the \$2,150 Pan Am sought. Pan Am sued for the balance, giving rise to the underlying action.

Both parties moved for summary judgment below, and the only contested issue was this: Did SNIC provide legally sufficient notice that it would rely upon a so-called "permissive" methodology—which it had employed to derive the \$853.02 amount due—to discharge its obligation to Pan Am under Wells' PIP policy terms? The county court concluded that it did not, and granted judgment in Pan Am's favor. After de novo review of this case, *see Volusia County v. Aberdeen at Ormond Beach, L.P.*, 760 So. 2d 126, 130 (Fla. 2000), this Court disagrees and reverses the judgment.

Two operative provisions in this case are sections 627.736(5)(a) and 627.736(5)(a)1, Florida Statutes, governing payments for medical treatment under PIP policy coverage. Section 627.736(5)(a), the "default" reimbursement methodology, states that a provider, such as Pan Am was here, "may charge the insurer and injured party only a reasonable amount pursuant to this section for the services and supplies rendered" not "exceed[ing] the amount [it] customarily charges for like services or supplies." In determining what amount is reasonable, "consideration may be given to evidence of usual and customary charges and payments accepted by the provider involved in the dispute, reimbursement levels in the community and various federal and state medical fee schedules applicable to motor vehicle and other insurance coverages, and other

information relevant to the reasonableness of the reimbursement for the service, treatment, or supply.”

The first subsection to section 627.736(5)(a), Florida Statutes then provides for the “permissive” method of reimbursement-rate determination: “[t]he insurer may limit reimbursement to 80 percent” of a “schedule of maximum charges” largely—but not entirely—determined by Medicare-reimbursement rates. § 627.736(5)(a)1. Finally, section 627.736(5)(a)5. requires notice of election to reimburse under this schedule: “An insurer may limit payment as authorized by this paragraph only if the insurance policy includes a notice at the time of issuance or renewal that the insurer may limit payment pursuant to the schedule of charges specified in this paragraph.”

Here, SNIC justified its reimbursement amount as allowed by section 627.736(5)(a)1.f., Florida Statutes (\$853.02 being 80% of the doubled rate of reimbursement under Medicare for the treatment Pan Am provided to Wells), with notice of its election to do so having been provided in Wells’ policy. To this latter point, the relevant notice elements were found in three places in that policy: (1) Part C(1), that medical benefits will be paid at 80% of “all reasonable expenses;” (2) The definition of these “reasonable expenses” as “the lesser of the amount provided by any fee schedule or schedule of payment, whether mandatory or permissive, as contained in the Florida Motor Vehicle No-Fault Law (§§627.730-627.405, Florida Statutes);” and (3) The “Limits of Liability” section, which restates the limitation of reimbursement found in the definition section, but adds verbatim language of limitation found in section 627.736(5)(a)1. Thus, SNIC asserted that it gave notice that would only reimburse Pan Am at the rate found in section 627.736(5)(a)1.f. because that provision is essentially reproduced in its policy.

Pan Am responded, and the lower court agreed, that such notice was nonetheless insufficient. In resolving this conflict, we are governed by *Geico Gen. Ins. Co. v. Virtual Imaging Servs., Inc.*, 141 So. 3d 147 (Fla. 2013), and *Allstate Ins. Co. v. Orthopedic Specialists*, 212 So. 3d 973 (Fla. 2017). In *Virtual Imaging*, the Florida Supreme Court held that an insurer could not rely upon the “permissive” rates of reimbursement where no notice was provided in the insurer’s policy that such an election would be made, despite a cursory attempt to “incorporate the provisions of the Florida No-Fault Motor Vehicle Law.” 141 So. 3d at 158. In *Orthopedic Specialists*, on the other hand, the court read the Allstate policy’s notice provisions sufficient to permit reimbursement election under the permissive methodology. 212 So. 3d 973. There, Allstate’s PIP policy stated that it would cover “eighty percent of all reasonable” medical expenses and, in another section, limited its payment exposure such that “[a]ny amounts payable under this coverage shall be subject to any and all limitations, authorized by section 627.736, or any other provisions of the Florida Motor Vehicle No-Fault Law, as enacted, amended or otherwise continued in the law, including, but not limited to, all fee schedules.” *Id.* at 975-76. This last reference in the policy to fee schedules was particularly compelling to the court in finding notice sufficiency in the case. *Id.*

While the lower court here concluded that the notice SNIC provided was too convoluted and therefore ambiguous to constitute legally effective notice, Wells’ policy, as noted above, is even clearer in its election of the permissive methodology than Allstate’s. **[[[explain how it’s clearer; maybe summarize]]]** Where the Allstate’s passes muster, so must SNIC’s, and the lower court erred in concluding otherwise. Accordingly, its judgment granting summary judgment to Pan Am is reversed.

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

1. The county court's "Order on Plaintiff's Motion for Final Summary Judgment," entered on September 20, 2017, is **REVERSED and REMANDED** for further proceedings consistent with this opinion.

2. Pan Am's "Motion for Attorney's Fees and Costs," filed May 11, 2018, is **DENIED**.

3. SNIC's "Motion for Appellate Attorney's Fees," filed March 5, 2019, is **GRANTED**, contingent on a judgment of no liability or a judgment obtained by Pan Am that is at least 25% less than the amount of SNIC's proposal for settlement, and on the trial court's determination that SNIC's proposal for settlement is otherwise enforceable under section 768.79, Florida Statutes, and Florida Rule of Civil Procedure 1.442. The assessment of those fees is **REMANDED** to the trial court.

DONE AND ORDERED in Chambers, at Orlando, Orange County, Florida, on this _____ day of _____, 2019.

/S/
HEATHER PINDER RODRIGUEZ
Presiding Circuit Judge

BLACKWELL and WHITEHEAD, JJ., concur.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Order has been furnished to the Honorable David P. Johnson, 425 N. Orange Avenue, Orlando, Florida 32801; to the Honorable Evellen Jewett, 425 N. Orange Avenue, Orlando, Florida 32801; Anthony J. Parrino, Esq., 8950 MLK St. N., St. Petersburg, FL 33702; and Chad Barr, Esq., 986 Douglas Ave., Ste 100 Altamonte Springs, FL 32714, on this ____ day of _____, 2019.

/S/ _____
Judicial Assistant