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

STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY,

Appellant,

v.

LINCOLN GENERAL INSURANCE COMPANY,

Appellee.
_____/

CASE NO.: 2011-CV-000076-A-O

Lower Case No.: 2008-CC-013699-O

Appeal from the County Court, for Orange County, Florida, Heather L. Higbee, County Judge.

David B. Kampf, Esquire, and
Sarah M. Sorgie, Esquire, for Appellant.

Christopher W. Wadsworth, Esquire, and
Joshua S. Worell, Esquire, for Appellee.

Before LATIMORE, ROCHE, and EGAN, J.J.

PER CURIAM.

FINAL ORDER REVERSING IN PART TRIAL COURT

Appellant/Cross-Appellee, State Farm Mutual Automobile Insurance Company ("State Farm"), and Appellee/Cross-Appellant Lincoln General Insurance Company ("Lincoln General") timely appeal the Trial Court's "Order on Defendant's Motion for Summary Judgment" entered on August 29, 2011. 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.

Summary of Facts and Procedural History

This appeal action arose from an automobile accident that occurred in Orange County, Florida on March 28, 2007. At that time, State Farm's insured, Marc Larochelle ("Larochelle"), was operating a 1998 Ford Crown Victoria sedan ("Crown Vic sedan") that he used as a taxicab. As a result of the accident, Larochelle received medical treatment which was paid by State Farm. The Crown Vic sedan was leased by Larochelle on a weekly basis from Cruzado Transport, Inc. d/b/a Maingate Taxi. Per the lease agreement, Larochelle was required to purchase and maintain his own personal injury protection ("PIP") insurance. Maingate Taxi insured the Crown Vic sedan through Lincoln General under a general liability policy that did not include PIP coverage.

On August 1, 2008, State Farm brought an action against Lincoln General seeking reimbursement for the payment it made for Larochelle's medical treatment. State Farm alleged that it was entitled to reimbursement because the Crown Vic sedan was a commercial motor vehicle subject to section 627.7405, Florida Statutes, which provides for such reimbursement. Lincoln General denied reimbursement contending that the Crown Vic sedan was not a commercial motor vehicle and notwithstanding that issue, Lincoln General was exempt from Florida No-Fault law because its insurance policy for the vehicle did not include PIP coverage.

Subsequently, the parties filed competing Motions for Summary Judgment and a hearing was held on June 14, 2011. After the hearing, the Trial Court entered the Order holding: 1) Section 627.7405, Florida Statutes, was ambiguous as written; thus the Crown Vic sedan was a commercial motor vehicle and 2) Because Lincoln General was not the PIP insurer of the Crown Vic sedan, it was not "the insurer" as contemplated under section 627.7405, Florida Statutes; thus, it was not a proper party to the action. Also, per the Trial Court's Order, State Farm filed an action for reimbursement against Cruzado Transport, Inc., as the owner of the Crown Vic

sedan.[1] In the instant case, State Farm appeals the Trial Court's second finding in the Order that Lincoln General was not a proper party. Lincoln General cross-appeals the first finding in the Order that the Crown Vic sedan was a commercial motor vehicle.

Arguments on Appeal and Cross-Appeal

In the appeal, State Farm argues: 1) The plain and unambiguous language of section 627.7405, Florida Statutes, provides that Lincoln General qualifies as an entity from whom State Farm is entitled to reimbursement for personal injury protection benefits; 2) The Trial Court erroneously construed section 627.733, Florida Statutes, to the exclusion of section 627.7405 thereby mandating reversal of the court's order as to this issue; and 3) The subject claim is controlled by the statutory liability imposed by Florida's Legislature, which expressly provided a right of reimbursement regardless of the specific type of coverage afforded by the commercial insurer's policy.

Conversely on appeal, Lincoln General argues: 1) Lincoln General is not Maingate Taxi's personal injury protection insurer; therefore, State Farm cannot seek reimbursement from Lincoln General directly; 2) Because Lincoln General did not provide PIP coverage, it is not an "insurer" as contemplated by the Legislature; and 3) Section 627.733, Florida Statutes, exempts taxicab services from personal injury protection benefits reimbursement.

In the cross-appeal, Lincoln General argues: 1) Taxicabs are not commercial vehicles pursuant to Florida law; 2) State Farm is estopped from asserting that the 1998 Crown Victoria sedan is a commercial motor vehicle; and 3) Taxicabs are not commercial motor vehicles pursuant to Federal law.

[1] *See State Farm Mutual Automobile Insurance Company v. Cruzado Transport, Inc.*, case no. 2012-CC-000998-O where subsequently, on February 13, 2013, State Farm filed a Notice of Voluntary Dismissal with prejudice in that case.

Conversely on cross-appeal, State Farm argues: 1) Pursuant to the rules and principles of statutory construction a taxicab sedan is a commercial motor vehicle and 2) In accordance with the Legislature's intent, the Court must affirm the Trial Court's finding that a Taxicab sedan qualifies as a commercial motor vehicle as contemplated by section 627.7405, Florida Statutes.

Lastly, both parties seek appellate attorney fees and costs pursuant to Florida Rule of Appellate Procedure 9.400, Florida Rule of Civil Procedure 1.442, and section 768.79 Florida Statutes, addressing proposals for settlement.

Standard of Review

The standard of review for summary judgment is de novo. *Krol v. City of Orlando*, 778 So. 2d 490, 491 (Fla. 5th DCA 2001); *Volusia County v. Aberdeen at Ormond Beach, L.P.*, 760 So. 2d 126, 130 (Fla. 2000). Accordingly, an appellate court must determine if there is any genuine issue of material fact and whether the moving party is entitled to judgment as a matter of law. *Krol* at 491, 492, citing Fla. R. Civ. P. 1.510(c).

In the instant appeal and cross-appeal, neither party argues that genuine issues of material fact are remaining that preclude summary judgment. Instead, both parties' arguments hinge on the Trial Court's interpretation and application of statutes to the non-disputes facts. When an appeal involves a purely legal matter such as the judicial interpretation of a statute, the standard of review is de novo. *Racetrac Petroleum, Inc. v. Delco Oil, Inc.*, 721 So. 2d 376, 377 (Fla. 5th DCA 1998).

Analysis

The crux of the instant case hinges on whether State Farm is entitled to PIP medical payment reimbursement from Lincoln General pursuant to section 627.7405, Florida Statutes (2008), ("reimbursement statute") that addresses an insurer's right of reimbursement and states:

> Notwithstanding any other provisions of ss. 627.730-627.7405, any insurer providing personal injury protection benefits on a private passenger motor vehicle shall have, to the extent of any personal injury protection benefits paid to any person as a benefit arising out of such private passenger motor vehicle insurance, a right of reimbursement against the owner or the insurer of the owner of a commercial motor vehicle, if the benefits paid result from such person having been an occupant of the commercial motor vehicle or having been struck by the commercial motor vehicle while not an occupant of any self-propelled vehicle.

First, from the plain meaning of this reimbursement statute, there is a right of reimbursement when the accident involves a commercial motor vehicle. Therefore, the issue arises whether the subject vehicle in this case is a private passenger motor vehicle or a commercial motor vehicle. The definitions applicable to this issue are found in section 627.732, Florida Statutes, which provides definitions related to sections 627.730 through 627.7405 in chapter 627, part XI addressing the Florida Motor Vehicle No-Fault Law. Specifically, section 627.732(3), Florida Statutes (2007), breakdowns the definition of a motor vehicle as follows:

> (a) A "private passenger motor vehicle," which is any motor vehicle which is a sedan, station wagon, or jeep-type vehicle and, if not used primarily for occupational, professional, or business purposes, a motor vehicle of the pickup, panel, van, camper, or motor home type.
>
> (b) A "commercial motor vehicle," which is any motor vehicle which is not a private passenger motor vehicle.

From the plain meaning of the definition under subsection (3)(a), it appears that a sedan is considered a private passenger motor vehicle because the restrictive language, “if not used primarily for occupational, professional, or business purposes”, is located after the motor vehicles that are sedans, station wagons, or jeep-type vehicles and is connected to the language listing pickup, panel, van, camper, or motor home vehicle types. Accordingly, based on this analysis of the statutes, the Crown Vic sedan, notwithstanding that it is used for taxi service, falls under the category of a private passenger motor vehicle. Therefore, State Farm would not be

entitled to reimbursement per these statutes. *See State Farm Mutual Automobile Ins. Co., Inc. v. Clarendon National Ins. Co.*, 10 Fla. L. Weekly Supp. 477d (Fla. 13th Cir. Ct. 2003).

Further, this Court acknowledges that the parties have presented other Florida statutes, outside of sections 627.730 through 627.7405, as well as Federal statutes in an effort to provide clarity in defining the terms private passenger and commercial motor vehicles. This Court has reviewed all of these other statutes presented and finds that they are not controlling in this case. Because section 627.732(3), Florida Statutes, specifically defines the terms at issue and is relevant to the reimbursement statute, there is no need to go to statutes outside of chapter 627, part XI in addressing the Florida Motor Vehicle No-Fault Law. *See State Farm Mutual Automobile Insurance Company v. Nichols*, 932 So. 2d 1067, 1073 (Fla. 2006) (applying the plain meaning of the statute and holding that where two statutes' provisions are in conflict, the specific statute controls over the general statute*); see also Day v. State*, 977 So. 2d 664 (Fla. 5th DCA 2008).

Accordingly, this Court in applying de novo review finds that from the plain wording of the applicable statutes, the Crown Vic sedan is a private passenger motor vehicle. Thus, the portion of the Trial Court's Order finding that the Crown Vic sedan is a commercial motor vehicle must be reversed. "When the language of the statute is clear and unambiguous and conveys a clear and definite meaning, there is no occasion for resorting to the rules of statutory interpretation and construction; the statute must be given its plain and obvious meaning." *Holly v. Auld*, 450 So. 2d 217, 219 (Fla. 1984) *(quoting A.R. Douglass, Inc. v. McRainey*, 137 So. 157, 159 (Fla. 1931*)*; *Citizens of State v. Public Service Commission*, 425 So. 2d 534, 542 (Fla. 1982) (holding that courts should not depart from the plain language employed by the Legislature and

applying the principle of statutory construction that words of common usage should be construed in their plain and ordinary sense).

As for the remaining arguments on appeal and cross-appeal, this Court's finding that the Crown Vic sedan is a private passenger motor vehicle and thus, not subject to the reimbursement statute, is dispositive. Thus, it is not necessary that this Court address the remaining arguments. Also, this Court finds that Lincoln as the prevailing party is entitled to appellate attorney's fees under section 768.79, Florida Statutes, per Lincoln's Proposal for Settlement filed May 7, 2010.

Based on the foregoing, it is hereby **ORDERED AND ADJUDGED** that the Trial Court's "Order on Defendant's Motion for Summary Judgment" entered on August 29, 2011 is **REVERSED** only as to its finding that the Crown Vic sedan is a commercial motor vehicle under section 627.7405, Florida Statutes, and **REMANDED** for further proceedings consistent with this proceeding. Also, Lincoln General's motion, "Appellee/Cross-Appellant's Motion for Attorney's Fees" filed May 3, 2012, is **GRANTED** and the assessment of those fees is **REMANDED** to the Trial Court. State Farm's motion, "Appellant/Cross-Appellee's Motion for Appellate Attorneys' Fees and Costs" filed September 18, 2012, is **DENIED**. Lastly, Appellee/Cross-Appellant, Lincoln General, is entitled to have costs taxed in its favor by filing a proper motion with the Trial Court pursuant to Florida Rule of Appellate Procedure 9.400(a).

DONE AND ORDERED in Chambers, at Orlando, Orange County, Florida on this 17th day of February, 2014.

/S/
ALICIA L. LATIMORE
Presiding Circuit Judge

ROCHE and EGAN, J.J., concur.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Order has been furnished to: **David B. Kampf, Esquire, Sarah M. Sorgie, Esquire**, Ramey & Kampf, P.A., 400 N. Ashley Drive, Suite 1625, Tampa, Florida 33602, davidkampf@defendfloridainsurance.com, dbknotice@defendfloridainsurance.com and **Christopher W. Wadsworth, Esquire, Joshua S. Worell, Esquire,** Wadsworth Huott, LLP, 200 SE First Street, Suite 1100, Miami, Florida 33131, cw@wadsworth-law.com, jsw@wadsworth-law.com on the 17th day of February, 2014.

/S/
Judicial Assistant