

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

GEICO INDEMNITY COMPANY,

Appellant,

v.

CENTRAL FLORIDA CHIROPRACTIC
CARE a/a/o David Cherry,
Appellee.

Case No. 2016-CV-000038-A-O

Lower Case No. 2015-CC-009396-O

Appeal from the County Court,
for Orange County, Florida,
Steve Jewett, County Judge.

Elizabeth C. Wheeler, Esquire,
for Appellant.

Russel Lazega, Esquire, and
Yasmin Gilinsky, Esquire,
for Appellee.

Before ROCHE, JORDAN, and DAWSON, J.J.

PER CURIAM.

In this PIP case, the Appellant, Geico Indemnity Company (Geico), timely appeals the trial court's April 22, 2016 order granting plaintiff's motion for final summary judgment and denying defendant's cross-motion for final summary judgment, which was entered in favor of the Appellee, Central Florida Chiropractic Care (Central Florida). This Court has jurisdiction under section 26.012(1), Florida Statutes and Florida Rule of Appellate Procedure 9.030(c)(1)(A).¹ We affirm.

¹We dispense with oral argument. Fla. R. App. P. 9.320.

Factual and Procedural Background

Central Florida filed a complaint seeking payment of PIP benefits as the assignee of David Cherry. According to the complaint, on or about July 30, 2014, Cherry sustained personal injuries related to the operation, maintenance, or use of a motor vehicle. Also according to the complaint, Cherry incurred reasonable expenses for necessary medical, rehabilitative, nursing, and remedial care with Central Florida, and he was covered for PIP benefits under an insurance policy that Geico had issued to Tiffanee Stewart.

The complaint alleged that Central Florida furnished Geico with a properly executed application for no-fault benefits as well as medical authorizations for Geico to obtain information necessary to the prompt adjustment of any claims, and that Central Florida gave notice of covered losses and made demand for no-fault benefits for dates of service from August 8, 2014 until October 28, 2014. The complaint further alleged that Central Florida had performed all conditions precedent to entitle it to recover PIP benefits.

Geico answered the complaint. As an affirmative defense, Geico asserted that it was not liable for PIP benefits because Cherry had failed to comply with a policy provision that required an insured person to submit to an examination under oath (EUO) upon request by Geico. According to Geico, Cherry failed to submit to EUOs that were scheduled to take place on November 6, 2014 and January 14, 2015.

Geico requested the EUOs as it sought to investigate whether Cherry was entitled to PIP coverage under Stewart's insurance policy with Geico. According to Geico, Cherry was a passenger in the automobile, but was not a named insured on the policy, and there was no obvious relation between Cherry and Stewart, who was the named insured. If Cherry already had a source

for PIP benefits, he would not be entitled to PIP benefits under Stewart's insurance policy with Geico, which provided that PIP coverage did not apply:

6. To any person, other than *you*, if such person is the *owner* of a *motor vehicle* with respect to which security is required under the Florida Motor Vehicle No-Fault law, as amended;

7. To any person, other than *you* or any *relative*, who is entitled to personal injury protection benefits from the *owner* or *owners* of a *motor vehicle* which is not an *insured-motor-vehicle* under this insurance or from the *owner's* insurer[.]

After Geico responded to Central Florida's request for admissions, the parties filed competing motions for summary judgment. Central Florida's motion for summary judgment alleged that Cherry was involved in an automobile accident on July 30, 2014, that it treated him for his injuries from August 8, 2014 through October 28, 2014, and that it timely submitted the associated charges for such treatment to Geico. Central Florida further alleged that Geico declined to pay any of the charges on the basis that Cherry had failed to submit to a EUO. However, according to Central Florida, while it mailed "an initial set of medical bills" to Geico on September 3, 2014, Geico did not schedule an EUO for Cherry until November 6, 2014. Central Florida also attached an affidavit from Dale Hanson, the owner of Central Florida Chiropractic Care, which stated that all billings from August 8, 2014 to September 3, 2014 for Cherry were mailed to Geico on or before September 23, 2014. Thus, Central Florida took the position that Geico's action in scheduling the EUO beyond the 30-day statutory period for payment was unreasonable, and as a result, Geico was in breach of the insurance contract and could not properly deny PIP benefits.

Geico in its motion for summary judgment pointed out that under section 627.736(6)(g), Florida Statutes (2014), an insured must submit to an EUO as a condition precedent to receiving benefits. Geico also pointed out that its insurance policy included an EUO provision that stated, "Compliance with submitting to an EUO is a condition precedent to receiving benefits."

Geico's motion included the affidavit of Danette Burke, a PIP litigation examiner at Geico. According to Burke, Geico "had questions regarding the loss" and requested that Cherry "participate in investigation of the claim and attend" an EUO. Thus, Cherry's EUO was scheduled for November 6, 2014, but Cherry failed to appear. Another EUO was scheduled for January 14, 2015, but again, Cherry failed to appear. Burke averred that as a result of Cherry's "failure to participate in the investigation," Geico "was not able to properly evaluate the claim." Thus, Geico took the position that Cherry's failure to attend the scheduled EUOs was a material breach of the insurance policy and precluded his assignee Central Florida from receiving PIP benefits.

The trial court conducted a hearing on the motions for summary judgment. After the hearing, the court entered its order granting plaintiff's motion for final summary judgment and denying defendant's cross-motion for final summary judgment. In its order, the court found it was "clear" that the first EUO "was not requested until after 30 days had passed for the bills at issue." The court cited to *Amador v. United Automobile Insurance Co.*, 748 So. 2d 307 (Fla. 3d DCA 1999), *review denied*, 767 So. 2d 464 (Fla. 2000) and *January v. State Farm Mutual Insurance Co.*, 838 So. 2d 604 (Fla. 5th DCA 2003) for support.

The trial court in its order acknowledged that an EUO is a condition precedent to benefits under the applicable version of the PIP statute, *see* section 627.736(6)(g), Florida Statutes (2014) but stressed that the condition precedent "cannot be read in a vacuum." For support, the court noted that the statutory language requiring PIP benefits to be paid within 30 days remained in effect, and that the legislature carved out a way to extend the time of investigation under section 627.736(4)(i), Florida Statutes (2014) for an additional 60 days, but "made sure to indicate that the insurer must deny or pay the claim" at the end of that 60 days. For purposes of the instant case, the court pointed out that Geico could not rely on section 627.736(4)(i) since "no evidence was

presented that a letter ever was sent to the assignor to allow the extension of the time for investigation.” The court pointed out that Geico’s argument that it may use an investigative tool “at any time” beyond the 30 days is “inconsistent” with the “specifically added” statutory provision that “still maintains” a cut off time for the insurer to investigate. The trial court concluded, “As the Plaintiff has proven the necessary elements to establish their case and Defendant did not timely schedule an EUO, the Defendant must pay the requested benefits, applicable interest and reasonable attorney’s fees and costs.”

Analysis

On appeal, Geico raises two main points. The Court addresses them in turn.

I. Geico argues that Central Florida’s claim for PIP benefits should have been barred by Cherry’s failure to submit to an EUO, which was a condition precedent to its receipt of PIP benefits. Geico points out that under section 627.736(4)(e)4., Florida Statutes (2014), the insurer of the owner of a motor vehicle is required to pay PIP benefits for bodily injury sustained by a person while occupying the owner’s motor vehicle, if the person injured is not:

- a. The owner of a motor vehicle with respect to which security is required under ss. 627.730-627.7405; or
- b. Entitled to personal injury benefits from the insurer of the owner of such a motor vehicle.

Geico also points out that its policy limited PIP coverage to persons meeting these statutory conditions, and that “there is a question of fact” with respect to whether Cherry met them. According to Geico, since Cherry was not a named insured, and he did not live at the same address as the named insured, it had a reasonable basis to investigate to determine whether he owned a motor vehicle with respect to which security was required under the No-Fault Law or was entitled to PIP benefits from the insurer of the owner of such a motor vehicle. Geico claims that these

questions could have been answered had he submitted to an EUO, and that his failure to do so violated both the insurance policy and section 627.736(6)(g), Florida Statutes (2014), which provides that an insured seeking benefits must comply with the terms of the policy, which include submitting to an EUO.² Geico urges that Cherry's failure to comply with this condition precedent bars his assignee Central Florida from receiving PIP benefits, and for support cites to two county court cases, *Savin Medical Group v. State Farm Mutual Automobile Insurance Co.*, 23 Fla. L. Weekly Supp. 762b (Fla. Miami-Dade Cnty. Ct. Dec. 4, 2015) (R.234-240) and *Atlantic Coast Orthopaedics v. State Farm Mutual Automobile Insurance Co.*, No. COCE 14-018361 (Fla. Broward Cnty. Ct. Mar. 4, 2016) (on rehearing).

We conclude that Geico's first point on appeal does not warrant a reversal, as it does not account for Geico's failure to pay Central Florida's claim, nor does it account for Geico's untimely request for an EUO. As the trial court aptly noted in its order, even though attendance at an EUO is now a condition precedent to receiving PIP benefits under section 627.736(6)(g), Florida Statutes (2014), this condition precedent "cannot be read in a vacuum" in view of other provisions in the PIP statute, namely section 627.736(4)(b) and section 627.736(4)(i).

Contrary to Geico's position, section 627.736(4)(b), Florida Statutes (2014) still provides, "Personal injury protection insurance benefits paid pursuant to this section are overdue if not paid within 30 days after the insurer is furnished written notice of the fact of a covered loss and of the amount of same." Thus, the insurer remains obliged to pay a PIP claim within 30 days, even with the EUO condition precedent. In the instant case, Geico never paid Central Florida's claim at all.

Also contrary to Geico's position, while section 627.736(4)(i), Florida Statutes (2014) does allow an insurer to extend the 30 days for paying a PIP claim for "an additional 60 days" to

²Section 627.736(6)(g) was added as part of the 2012 amendment to the PIP statute. See ch. 2012-197, § 10, Laws of Fla.

investigate suspected insurance fraud, the statute requires that the insurer “notify the claimant, in writing, within 30 days after submission of the claim that the claim is being investigated for suspected fraud.” In the instant case, it is uncontroverted that Geico failed to comply with section 627.736(4)(i), and the trial court specifically found that “no evidence was presented that a letter ever was sent to the assignor to allow the extension of the time for investigation.” As the court then reasoned, Geico’s argument that it may use an investigative tool “at any time” beyond the 30 days is “inconsistent” with the “specifically added” statutory provision that “still maintains” a cut off time for the insurer to investigate. Because Geico failed to comply with section 627.736(4)(i), its request that Cherry submit to an EUO was untimely.

As Central Florida points out, Geico’s cases *Savin Medical Group* and *Atlantic Coast* do not call for a different result. Both are county court cases and as such they are not binding on this Court. Additionally, *Savin Medical Group* does not appear to apply as there is no indication that its facts involved an untimely EUO, as in the instant case.

As for *Atlantic Coast*, while it did involve an untimely request for an EUO, the Court does not agree with its reasoning. *Atlantic Coast* held that an insurer can request an EUO after the 30 days have passed, and can properly deny payment for failure to submit to an EUO. For support, *Atlantic Coast* looked to section 627.736(4)(b)6., Florida Statutes, which provides,

This paragraph does not preclude or limit the ability of the insurer to assert that the claim was unrelated, was not medically necessary, or was unreasonable or that the amount of the charge was in excess of that permitted under, or in violation of, subsection (5). Such assertion may be made at any time, including after payment of the claim or after the 30-day period for payment set forth in this paragraph.

However, contrary to the holding in *Atlantic Coast* (and to Geico’s position), while section 627.736(4)(b)6., Florida Statutes clearly allows the insurer to raise challenges to a PIP claim after

the 30 days for paying a claim have passed, nothing in the statute additionally excuses the insurer's potential breach for failure to pay a PIP claim within 30 days as contemplated by section 627.736(4)(b). *See January v. State Farm Mutual Insurance Co.*, 838 So. 2d 604, 607 (Fla. 5th DCA 2003) ("It is clear that an insurer is not freed from the statutory time constraints of a PIP claim payment simply by raising a coverage issue."). Indeed, the statute itself even contemplates the scenario of the insurer first paying the claim within 30 days and later challenging it, as it states, "Such assertion may be made at any time, *including after payment of the claim* or after the 30-day period for payment set forth in this paragraph." (Emphasis added.) Of course, the insurer may choose not to pay a claim within 30 days and then challenge it, "but accepts the risk that if the insured prevails, the insurer will be liable to pay interest on the claim and the insured's attorney's fees." *See January*, 838 So. 2d at 607.

In short, *Atlantic Coast's* interpretation of section 627.736(4)(b)6., Florida Statutes, which allows an insurer not to pay a PIP claim for failure to submit to an EUO, even if its request for an EUO was beyond the 30 days contemplated by section 627.736(4)(b), fails to give effect to section 627.736(4)(b). Moreover, *Atlantic Coast* appears to overlook section 627.736(4)(i), Florida Statutes, which, as discussed, authorizes a 60-day extension of the 30 days to pay a PIP claim to investigate suspected insurance fraud if the insurer first notifies the claimant in writing "within 30 days after submission of the claim." *Atlantic Coast's* interpretation of section 627.736(4)(b)6., which would seemingly allow an insurer not to pay a PIP claim for failure to submit to an EUO, even if its request for an EUO failed to comply with section 627.736(4)(i), would render section 627.736(4)(i) meaningless.

Under Florida law, it is well-settled that "all parts of a statute must be read together in order to achieve a consistent whole. Where possible, courts must give full effect to all statutory

provisions and construe related statutory provisions in harmony with one another.” *Forsythe v. Longboat Key Beach Erosion Control Dist.*, 604 So. 2d 452, 455 (Fla. 1992) (internal citations omitted). In our view, *Atlantic Coast’s* interpretation of section 627.736(4)(b)6., Florida Statutes appears to be contrary to the dictates of *Forsythe*, as it fails to give effect to section 627.736(4)(b) and otherwise renders section 627.736(4)(i) meaningless.

In contrast to *Atlantic Coast*, it is clear that in the instant case, the trial court’s determination not to read section 627.736(6)(g), Florida Statutes (2014) “in a vacuum” but to consider it along with section 627.736(4)(b) and section 627.736(4)(i) is consistent with *Forsythe*, as it gives full effect to all three statutory provisions. Moreover, the trial court’s determination does not negate the effect of section 627.736(4)(b)6., the statute relied on by *Atlantic Coast*, since the insurer would still be free to question a claim “at any time” under that statute.

Finally, Geico’s first point fails under well-settled principles of contract law. Geico argues that it is excused from paying Central Florida’s PIP claim due to Cherry’s failure to submit to a requested EUO, which was a condition precedent under the insurance policy. However, in so arguing, Geico overlooks its own prior breach of the insurance policy. As discussed, the EUOs were scheduled to take place after the 30 days had already run. As a result, by the time Cherry failed to appear for the scheduled EUOs, Geico had already breached the insurance policy, since it failed to pay the PIP claim within 30 days, and failed to extend the 30 days pursuant to section 627.736(4)(i), Florida Statutes (2014) by providing the required written notification before the expiration of the 30 days. And because Geico was already in breach of the insurance contract before the EUOs were scheduled to take place, Cherry was not obliged to submit to them. According to Williston,

A party who first commits a material breach cannot enforce the contract. Otherwise stated, a party who has materially breached³ a contract is not entitled to recover damages for the other party's subsequent nonperformance of the contract, since the latter party's performance is excused.

23 WILLISTON ON CONTRACTS § 63:3 (4th ed. & May 2016 Update; footnotes omitted). In short, because Geico was the first party to commit a breach of the insurance contract, Cherry's performance was excused.

II. Geico argues that nothing in section 627.736, Florida Statutes (2014) supports the trial court's ruling that it is required to pay PIP benefits because the EUOs were scheduled after the 30-day period for payment has passed. According to Geico, the court's ruling is contrary to *January v. State Farm Mutual Insurance Co.*, 838 So. 2d 604 (Fla. 5th DCA 2003), which was cited in the court's order, and the "precise issue" was addressed in *United Automobile Insurance Co. v. Rodriguez*, 808 So. 2d 82 (Fla. 2001), which was cited in *January*. In *Rodriguez*, the court determined that the Florida No-Fault Law subjects an insurer to specific penalties, including interest and attorneys' fees, once a payment becomes "overdue," but the insurer "is *not* forever barred from contesting the claim." *Id.* at 87 (emphasis in original). Geico points out that this language was quoted in *January*, and that *January* went on to state that *Rodriguez* "confirms that an insurer is not automatically obligated to pay a claim when the thirty-day period has passed." *January*, 838 So. 2d at 607. Geico also points out that in *Rodriguez*, the Florida Supreme Court determined that the statutory sanctions of 10% interest and attorney's fees were the only penalties approved by the Legislature for a late payment.

³Geico's breach can only be deemed material as opposed to minor, as failing to pay a PIP claim in a timely manner clearly goes to the essence of the insurance contract. See generally *Sublime, Inc. v. Boardman's Inc.*, 849 So.2d 470, 471 (Fla. 4th DCA 2003) ("To constitute a vital or material breach, a defendant's non-performance must be such as to go to the essence of the contract."). See also § 627.736(4)(b), Fla. Stat. (2014) ("Personal injury protection insurance benefits paid pursuant to this section are overdue if not paid within 30 days after the insurer is furnished written notice of the fact of a covered loss and of the amount of same.").

Geico goes on to argue that it did not improperly fail to pay Central Florida's PIP claim within 30 days, because it had not been furnished written notice of the fact of a covered loss for purposes of section 627.736(4)(b), Florida Statutes (2014). According to Geico, "unanswered" questions of fact exist over whether Cherry was not the owner of a motor vehicle with respect to which security was required under the No-Fault Law, or whether he was not entitled to PIP benefits from the insurer of the owner of such a motor vehicle.

Finally, Geico argues that the trial court's reliance on *Amador v. United Automobile Insurance Co.*, 748 So. 2d 307 (Fla. 3d DCA 1999), *review denied*, 767 So. 2d 464 (Fla. 2000) was misplaced. For support, Geico claims that *Rodriguez* "implicitly overruled" *Amador*. Geico also suggests that subsequent amendments to the No-Fault Law, including section 627.736(4)(b), Florida Statutes (2014), confirm the Florida Supreme Court's interpretation of the statute in *Rodriguez*, that a failure to pay within 30 days does not bar an insurer from contesting a claim.

Geico's arguments lack merit. First, the trial court's ruling, that Geico is required to pay PIP benefits because the EUOs were scheduled after the 30-day period for payment has passed, is not contrary to *January* and *Rodriguez*. To be sure, as Geico contends, *January* indicated that an insurer is not automatically obligated to pay a claim when the 30-day period has passed, and *Rodriguez* stated that the insurer "is *not* forever barred from contesting the claim." *Rodriguez*, 808 So. 2d at 87 (emphasis in original). However, other language in *January* and *Rodriguez* makes it clear that an insurer may contest a claim after 30 days but is still otherwise subject to the 30-day time limit.

Notably, *January* also stated that "an insurer is not freed from the statutory time constraints of a PIP claim payment simply by raising a coverage issue," and that the insurer "may contest the claim after the thirty days, but accepts the risk that if the insured prevails, the insurer will be liable

to pay interest on the claim and the insured's attorney's fees." *January*, 838 So. 2d at 607. *January* explained, "[I]t is simply incorrect to conclude that where the insurer's reason for non-payment is a doubt about coverage, that the insurer is free to ignore the thirty-day claim deadline and investigate at its leisure with no limitation or consequences." *Id.* Thus, *January* rejected the circuit court's determination that that the insurer had no duty to act on the PIP claims within 30 days when the insurer raised a coverage issue. *See id.*

Similarly, *Rodriguez* determined that the insurer remained free to contest a PIP claim after 30 days, and would not have to pay the claim if it prevailed, but if the insurer did not prevail, it would be subject to attorney's fees and interest. *Rodriguez*, 808 So. 2d at 87. In the instant case, the trial court correctly determined that Central Florida was entitled to PIP benefits as the prevailing party, and that Geico was liable for attorney's fees and interest, since Geico in requesting the EUOs failed to follow the procedure for extending the 30 days as set forth in section 627.736(4)(i), Florida Statutes (2014), which authorizes a 60-day extension of the 30 days to pay a PIP claim to investigate suspected insurance fraud if the insurer first notifies the claimant in writing "within 30 days after submission of the claim."

Second, Geico cannot plausibly claim that it did not improperly fail to pay the PIP claim within 30 days, since in its view "unanswered" questions of fact exist over whether Cherry was not the owner of a motor vehicle with respect to which security was required under the No-Fault Law, or whether he was not entitled to personal injury benefits from the insurer of the owner of such a motor vehicle. Obviously, these are questions that likely could have been resolved by Cherry submitting to an EUO. However, as explained, in scheduling the EUOs, Geico failed to follow the procedure for extending the 30 days as set forth in section 627.736(4)(i), Florida Statutes (2014). As a result, Geico was not entitled to seek answers to those questions.

Finally, Geico is incorrect in arguing that the trial court should not have relied on *Amador v. United Automobile Insurance Co.*, 748 So. 2d 307 (Fla. 3d DCA 1999), *review denied*, 767 So. 2d 464 (Fla. 2000) in its ruling. *Amador* was not “implicitly overruled” by *United Automobile Insurance Co. v. Rodriguez*, 808 So. 2d 82 (Fla. 2001). Rather, as will be explained, the two cases are merely complementary to one another, with *Amador* focusing on the insured’s rights in a PIP action and *Rodriguez* focusing on the insurer’s rights.

The facts in *Amador* are similar to those in the instant case. More than 30 days after receiving notice of a PIP claim, the insurer scheduled EUOs for the insureds. In response, the insureds filed suit. The trial court granted the insurer’s motion for summary judgment. On appeal, *Amador* rejected the insurer’s argument that the insureds were barred from filing suit without first submitting to EUOs, and held, “[B]ecause of the special nature of, and protection afforded by, the PIP statute, upon expiration of the 30-day period, the insurer is itself in breach of the contract and may therefore, not deny an insured the right to access the courts for purposes of enforcing the PIP statute.” 748 So. 2d at 309. Notably, *Amador* did not additionally hold that the insureds would necessarily prevail once it filed suit.

In *Rodriguez*, the insurers failed to pay PIP claims within 30 days. The insureds moved for summary judgment, arguing that after 30 days, the insurer could no longer contest the medical bills and must pay them, and the district court agreed. *Rodriguez*, 808 So. 2d at 84. *Rodriguez* quashed the district court’s decision, holding that the insurer remained free to contest a PIP claim after 30 days, and would not have to pay the claim if it prevailed, but if the insurer did not prevail, it would be subject to attorney’s fees and interest. *Id.* at 87.

In short, *Amador* made it clear that the *insured* simply has the right to file suit for nonpayment of PIP benefits after 30 days have passed, and *Rodriguez* made it clear that the *insurer*

simply has the right to contest a PIP claim after 30 days. As noted, nothing in *Amador* provides that the insured is always going to prevail after the 30 days have run; the ensuing litigation may well establish that the insurer was entitled not to pay the claim. Similarly, under *Rodriguez*, an insurer may choose to contest a claim after 30 days, but it then runs the risk of being liable for attorney's fees and interest if it does not prevail in the ensuing litigation. Accordingly, the holdings in the two cases are merely complementary to one another, and *Rodriguez* could not have "implicitly overruled" *Amador*. Indeed, the Fifth District in *January*, which cited to *Rodriguez*, also cited to *Amador* with apparent approval. *See January*, 838 So. 2d at 606-07.

To be sure, as Geico points out, subsequent amendments to the No-Fault Law, including section 627.736(4)(b)6., Florida Statutes (2014), confirm the Supreme Court's interpretation of the statute in *Rodriguez*, that a failure to pay a PIP claim within 30 days does not bar an insurer from contesting a claim. Section 627.736(4)(b)6. provides:

This paragraph does not preclude or limit the ability of the insurer to assert that the claim was unrelated, was not medically necessary, or was unreasonable or that the amount of the charge was in excess of that permitted under, or in violation of, subsection (5). Such assertion may be made at any time, including after payment of the claim or after the 30-day period for payment set forth in this paragraph.

However, as discussed, section 627.736(4)(b)6. must be construed in a manner that also gives effect to section 627.736(4)(b) (PIP benefits are overdue if not paid within 30 days) and section 627.736(4)(i) (allowing for extension of 30 days if insurer timely provides written notice). *See Forsythe*, 604 So. 2d at 455. Additionally, *Rodriguez* made it clear that an insurer who chooses not to pay a PIP claim within 30 days and then contest it after 30 days will then be exposed to the statutory penalties of interest and attorney's fees if it does not ultimately prevail. *Rodriguez*, 808 So. 2d at 87. As explained, the insurer's right to contest a contest after 30 days under *Rodriguez*

is merely complementary to the insured's right to sue after 30 days under *Amador*. In short, nothing in section 627.736(4)(b)6. and *Rodriguez* does violence to the holding in *Amador*.

Accordingly, it is hereby **ORDERED AND ADJUDGED** as follows:

1. The trial court's order granting plaintiff's motion for final summary judgment and denying defendant's cross-motion for final summary judgment, rendered on April 22, 2016, is **AFFIRMED**.

2. Central Florida's motion for appellate attorney's fees, filed on October 31, 2016, is **GRANTED**, and 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 _____, 2017.

/S/ _____
RENEE A. ROCHE
Presiding Circuit Judge

JORDAN and DAWSON, J.J., concur.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished to the Honorable Steve Jewett, Orange County Judge, Orange County Courthouse, 425 N. Orange Ave., Orlando, FL 32801; the Honorable Faye L. Allen, Orange County Judge, Orange County Courthouse, 425 N. Orange Ave., Orlando, FL 32801; Elizabeth C. Wheeler, Elizabeth C. Wheeler, P.A., P.O. Box 2266, Orlando, FL 32802-2266; Russel Lazega, Esq., Florida Advocates, 45 East Sheridan St., Dania Beach, FL 33004; and Yasmin Gilinsky, Esq., Florida Advocates, 45 East Sheridan St., Dania Beach, FL 33004, on this _____ day of _____, 2017.

Judicial Assistant