IN THE CIRCUIT COURT OF THE
ELEVENTH JUDICIAL CIRCUIT IN
AND FOR MIAMI-DADE COUNTY, FLORIDA

CIVIL DIVISION – CLASS REPRESENTATION

CASE NO.

ALL X-RAY DIAGNOSTIC SERVICES, CORP., as assignee,
on behalf of itself and all others similarly situated,

Plaintiff,
vs.

GEICO INDEMNITY COMPANY,

Defendant.
_____/

CLASS ACTION COMPLAINT

Plaintiff, ALL X-RAY DIAGNOSTIC SERVICES, CORP. ("Plaintiff" or "ALL X-RAY"), as assignee of Luis Pino, on behalf of itself and all others similarly situated, by its undersigned counsel, sues Defendant, GEICO INDEMNITY COMPANY ("Defendant" or "GEICO"), and alleges as follows:

JURISDICTION, PARTIES AND VENUE

1. This is an action asserting a class action claim for declaratory relief pursuant to Fla. R. Civ. P. 1.220(b)(1)(A) and/or 1.220(b)(2) and Chapter 86, Florida Statutes. This Court has subject matter jurisdiction over this action because this is a class action and Sec. 86.011, Florida Statutes (2019) likewise confers jurisdiction on this Court to address the Declaratory Action. The amount in controversy exceeds $30,000, exclusive of interest, attorney's fees and costs.

2. Plaintiff, ALL X-RAY DIAGNOSTIC SERVICES, CORP., is a Florida corporation and a duly licensed medical provider authorized to do business and doing business in Miami-Dade County, Florida. Plaintiff provides diagnostic services to Florida residents who have

sustained personal injuries in motor vehicle collisions, and who have assigned to Plaintiff the right to collect personal injury protection ("PIP") benefits under automobile insurance policies issued by Defendant.

3. At all times material hereto, Luis Pino was a patient at Plaintiff, ALL X-RAY, who is and/or was an insured or omnibus insured under an automobile insurance policy providing personal injury protection ("PIP") benefits issued by the Defendant, GEICO, and who assigned his rights and benefits of said automobile insurance policy to Plaintiff, ALL X-RAY. This action is brought as a result of GEICO's breach of the terms of said automobile insurance policy and Florida Statute Sec. 627.736(5)(a)(2), as more specifically set forth herein.

4. Defendant, GEICO INDEMNITY COMPANY, is a Maryland corporation authorized to transact, and transacting, insurance business under the laws of the State of Florida in Miami-Dade County, Florida and at all material times, sold automobile insurance coverage subject to the "Florida Motor Vehicle No-Fault Law or the "PIP Statute".

5. This case involves a dispute concerning the amount required to be paid by the Insurer to diagnostic providers pursuant to Florida Statute Sec. 627.736(5)(a)(2) (2012-2019). Relying upon the same statutory section -- some insurers claim that the 2012 PIP statute requires them to apply the highest 2007 Medicare Part B Schedule and others claim that the 2012 PIP statute continues to permit them to utilize the 2007 participating physicians fee schedule.

6. Specifically, this case concerns the interpretation of the phrase used in Florida Statute Sec. 627.736(5)(a)(2) (2012-2019) to wit: "allowable amount under the applicable schedule of Medicare Part B for 2007".

7. Venue is proper in Miami-Dade County, Florida, as Defendant has offices for transaction of its customary business in Miami-Dade County, Florida, and/or the cause of action set forth below arose and/or occurred in Miami-Dade County, Florida.

8. All conditions precedent to the maintenance of this action have occurred, have been performed or have been waived.

NATURE OF THE ACTION

9. This action seeks declaratory relief based upon the Defendant's breach of its insurance policy by failure to pay the proper amount of reimbursements to the Plaintiff and the members of the Class for certain medical services provided to the Defendant's insureds.

10. Specifically, Plaintiff, on behalf of itself and the members of the Class, seeks the determination that the Defendant engaged in an improper uniform business practice of failing to utilize the highest applicable Medicare Part B payment schedule in violation of Florida Statute Sec. 627.736(5)(a)(2) when calculating the amount of personal injury protection benefits due to the Plaintiff and all Class members, in violation of the Defendant's insurance policy and the Florida Motor Vehicle No-Fault Law.

FACTS PERTAINING TO CLASS PLAINTIFF

11. On or about January 3, 2020, Luis Pino was involved in a motor vehicle accident, and as a result, sustained bodily injuries related to the operation, maintenance or use of a motor vehicle.

12. At all times material hereto, Luis Pino was a contracting party and/or a named insured and/or an omnibus insured under an automobile insurance policy issued by GEICO, which policy was in full force and effect, and provided Personal Injury Protection ("PIP") benefits coverage as required by Florida law.

13. At all times material hereto, Luis Pino was assigned GEICO Claim number 0651065000000001 for all claims related to his January 3, 2020 motor vehicle accident.

14. On or about January 21, 2020, Luis Pino sought and received reasonable, related and medically necessary diagnostic services from the Plaintiff as a direct and proximate result of his injuries.

15. In exchange for providing these services, ALL X-RAY obtained an assignment of benefits from Luis Pino and brings this action as his assignee. As the assignee ALL X-RAY has stepped in Luis Pino's shoes and has become a party to the insurance contract. A true and correct copy of the Assignment of Benefits is attached hereto as Exhibit "A".

16. Plaintiff has provided similar services to other PIP insureds of Defendant after receiving similar assignments of benefits, and reasonably anticipates it will continue to do so in the future.

17. As the assignee of Luis Pino's PIP benefits, Plaintiff timely submitted a proof of claim to Defendant seeking payment of no-fault benefits under Defendant's Policy for the diagnostic services provided to Luis Pino on January 21, 2020. The particular aspects of this proof of claim will be detailed below.

18. Defendant made the determination that Luis Pino was entitled to Personal Injury Protection "coverage" under the applicable Policy as a result of the January 3, 2020 automobile accident.

19. Defendant likewise made the determination that the Plaintiff's proof of claim was a covered "medical expense" under its applicable Policy. As is depicted by Defendant's Explanation of Reviews set forth below, the Defendant "approved" all cpt codes billed for payment.

LINE	DOS	PROC CODE	MOD	DESCRIPTION	UNITS	CHARGE	REDUCTION	*PEN REDUCTION	PROVIDER REIMBURSE	EXPLANATION
1	01/21/20	72052		Radex spine cervical 6 or more views	1.0	$700.00	$561.32	$0.00	$138.68	721E
2	01/21/20	72110		Radex spine lumbosacral minimum 4 views	1.0	$700.00	$585.12	$0.00	$114.88	721E
3	01/21/20	73080		Radex elbow complete minimum 3 views	1.0	$500.00	$427.74	$0.00	$72.26	721E
4	01/21/20	73564		Radiologic exam knee complete 4/more views	1.0	$500.00	$411.46	$0.00	$88.54	721E
Total Lines :		4				$2,400.00	$1,985.64	$0.00	$414.36	

Reimbursement Amount :	**$**	**414.36**
Previous Reimbursement Amount :	**$**	**0.00**
Difference in Reimbursement Amount :	**$**	**0.00**
Apportionment Amount :	**$**	**0.00**
Less Deductible :	**$**	**0.00**
Limited Benefits/Copay :	**$**	**0.00**
EOR Check Amount :	**$**	**331.49**

EXPLANATION	EXPLANATION FOR THE REVIEW AMOUNT	REF LINE NUMBER
721E	Reimbursed according to the Florida fee schedule, as specified in Florida Statute 627.736(5)(a)1.	1, 2, 3, 4

20. As is set forth in the Explanation of Review, after approving the CPT codes billed for services rendered to Luis Pino the Defendant determined an "allowed" amount for each charge. To determine the "allowed" amounts, the Defendant compared the 2007 to the 2020 Medicare Part B participating physician's fee schedule and then allowed the higher of the two amounts at 200%.

21. The Defendant failed to use the 2007 Medicare Part B OPPS payment schedule to determine the allowed amounts, which in this case would have been the highest applicable Medicare Part B schedule in accordance with Florida Statute Sec. 627.736(5)(a)(2) The failure to

use the highest applicable Medicare Part B payment schedule to determine the approved amounts for CPT codes billed was a violation of Florida Statute Sec. 627.736(5)(a)(2)

22. Upon information and belief, the Defendant has issued policies like the one issued to Luis Pino providing PIP benefits coverage to thousands of other Florida residents and has consistently paid improperly reduced amounts to Plaintiff and members of the Class as a result of its failure to utilize the highest applicable Medicare Part B payment schedule to determine the approved amounts for CPT codes billed was a violation of Florida Statute Sec. 627.736(5)(a)(2)

HISTORICAL AMENDMENTS TO FLORIDA STATUTE SEC. 627.736

23. Prior to the year 2001, there were no fee schedules contained within Sec. 627.736. However, effective November 1, 2001 the Florida Legislature amended the statute adding section (5)(b)(5) which contained a payment schedule applicable only to MRIs that stated as follows:

> 5. Effective upon this act becoming a law and before November 1, 2001, allowable amounts that may be charged to a personal injury protection insurance insurer and insured for magnetic resonance imaging services **shall not exceed 200 percent of the allowable amount under Medicare Part B for year 2001**, for the area in which the treatment was rendered. Beginning November 1, 2001, allowable amounts that may be charged to a personal injury protection insurance insurer and insured for magnetic resonance imaging services **shall not exceed 175 percent of the allowable amount under Medicare Part B for year 2001**, for the area in which the treatment was rendered, adjusted annually by an additional amount equal to the medical Consumer Price Index for Florida, except that allowable amounts that may be charged to a personal injury protection insurance insurer and insured for magnetic resonance imaging services provided in facilities accredited by the American College of Radiology or the Joint Commission on Accreditation of Healthcare Organizations shall not exceed 200 percent of the allowable amount under Medicare Part B for year 2001, for the area in which the treatment was rendered, adjusted annually by an additional amount equal to the medical Consumer Price Index for Florida. This paragraph does not apply to charges for magnetic resonance imaging services and nerve

conduction testing for inpatients and emergency services and care as defined in chapter 395 rendered by facilities licensed under chapter 395. (emphasis added)

24. This new payment schedule sparked a debate between providers and insurers as to which Medicare Part B schedule would be applicable to claims for MRI services – the participating or the limiting charge schedule. In 2003, in an effort to clarify the phrase "allowable amount" the Legislature amended Sec. 627.736 (5)(b)(5) to state as follows:

> 5. Effective upon this act becoming a law and before November 1, 2001, allowable amounts that may be charged to a personal injury protection insurance insurer and insured for magnetic resonance imaging services shall not exceed 200 percent of the allowable amount under Medicare Part B for year 2001, for the area in which the treatment was rendered. Beginning November 1, 2001, allowable amounts that may be charged to a personal injury protection insurance insurer and insured for magnetic resonance imaging services **shall not exceed 175 percent of the allowable amount under the participating physician fee schedule of Medicare Part B for year 2001**, for the area in which the treatment was rendered, adjusted annually on August 1 to reflect the prior calendar year's changes in the annual Medical Care Item of the Consumer Price Index for All Urban Consumers in the South Region as determined by the Bureau of Labor Statistics of the United States Department of Labor for the 12-month period ending June 30 of that year, except that allowable amounts that may be charged to a personal injury protection insurance insurer and insured for magnetic resonance imaging services provided in facilities accredited by the Accreditation Association for Ambulatory Health Care, the American College of Radiology, or the Joint Commission on Accreditation of Healthcare Organizations **shall not exceed 200 percent of the allowable amount under the participating physician fee schedule of Medicare Part B for year 2001**, for the area in which the treatment was rendered, adjusted annually on August 1 to reflect the prior calendar year's changes in the annual Medical Care Item of the Consumer Price Index for All Urban Consumers in the South Region as determined by the Bureau of Labor Statistics of the United States Department of Labor for the 12-month period ending June 30 of that year. This paragraph does not apply to charges for magnetic resonance imaging services and nerve conduction testing for inpatients and emergency services and care as defined in chapter 395 rendered by facilities licensed under chapter 395. (emphasis added).

After the 2003 amendment, the Third District Court of Appeal addressed the issue of participating v. limiting charge fee schedules in the case of Millennium Diagnostic Imaging Center, Inc. v. Security National Ins. Co., 882 So.2d 1027, (Fla. 3d DCA 2004) and again in Advanced Diagnostics Testing v. Allstate Ins. Co., 888 So. 2d 663 (Fla. 3d DCA 2004). In Millennium Diagnostic, the Court held that the 2003 amendment to the 2001 statute was enacted as a clarification of the legislature's intent on what an "allowable amount" would be. Id. at 1030; *citing* Lowry v. Parole & Prob. Comm'n, 473 So.2d 1248, 1250 (Fla. 1985)("When, as occurred here, an amendment to a statute is enacted soon after controversies as to the interpretation of the original act arise, a court may consider that amendment as a legislative interpretation of the original law and not as a substantive change thereof."). The District Court of Appeal affirmed the trial court's interpretation of the 2001 statute holding that the "allowable amount" referred to the participating physician's fee schedule based upon the 2003 clarification of the law. A few months later, the Court re-affirmed its statutory interpretation in Advanced Diagnostics again holding that the "allowable amount" language within the 2001 statute referred to the participating physician's fee schedule based upon the 2003 legislative amendment clarifying its intent.

25. In 2008, the Florida Legislature again amended Sec. 627.736 eliminating the MRI fee schedule and inserting what is now commonly referred to as the "fee schedule" payment methodology for all eligible services. The new statutory language again specifically included reference to the participating physician's fee schedule, stating in relevant part:

> 2. The insurer may limit reimbursement to 80 percent of the following schedule of maximum charges:
>
> . . .

f. For all other medical services, supplies, and care, **200 percent of the allowable amount under the participating physicians schedule of Medicare Part B**. However, if such services, supplies, or care is not reimbursable under Medicare Part B, the insurer may limit reimbursement to 80 percent of the maximum reimbursable allowance under workers' compensation, as determined under s. 440.13 and rules adopted thereunder which are in effect at the time such services, supplies, or care is provided. Services, supplies, or care that is not reimbursable under Medicare or workers' compensation is not required to be reimbursed by the insurer.

3. For purposes of subparagraph 2., the applicable fee schedule or payment limitation under Medicare is the fee schedule or payment limitation in effect at the time the services, supplies, or care was rendered and for the area in which such services were rendered, **except that it may not be less than the allowable amount under the participating physicians schedule of Medicare Part B for 2007 for medical services, supplies, and care subject to Medicare Part B.** (emphasis added).

26. Lastly, in 2012 the Legislature once again amended the payment provision in Sec. 627.736 deleting reference to "the participating physicians schedule of Medicare Part B for 2007" and replacing it with "the applicable schedule of Medicare Part B for 2007", as stated in relevant part as follows:

1. The insurer may limit reimbursement to 80 percent of the following schedule of maximum charges:

. . .

f. 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).

. . .

2. For purposes of subparagraph 1., the applicable fee schedule or payment limitation under Medicare is the fee schedule or payment limitation in effect on March 1 of the year in which the services, supplies, or care is rendered and for the area in which such services, supplies, or care is rendered, and the applicable fee schedule or payment limitation applies throughout the remainder of that year,

> notwithstanding any subsequent change made to the fee schedule or payment limitation, **except that it may not be less than the allowable amount under the applicable schedule of Medicare Part B for 2007 for medical services, supplies, and care subject to Medicare Part B.** (emphasis added).

In this latest amendment to the Statute, the legislature removed the words "participating physicians" and replaced them with the word "applicable". This change in the statutory language that has existed since 2003 is legally significant and changes the manner in which the insurer is required to calculate the minimum amounts due medical providers. It is the Plaintiff's position that the current statute requires the insurer to compare the amount allowed by the Medicare Part B participating physician's fee schedule for the year of the date of service to all of the 2007 Medicare Part B payment schedules – participating, limiting, and OPPS-- and apply the highest one to a claim for PIP benefits. This interpretation gives full meaning to the statutory term "schedule of maximum charges", would comport with the legislative amendment and with the long-standing statutory interpretation of Florida's No-Fault Statute.

CLASS ACTION ALLEGATIONS

27. Plaintiff, together with such other members of the Class that may join this action as class representatives, hereby brings Counts I and II of this action on its own behalf and on behalf of all those similarly situated who were underpaid by the Defendant based, in whole or in part, on its unlawful interpretation and application of Sec. 627.736(5)(a)(2), Florida Statutes (2012-2019) and the Medicare Part B payment schedules

28. As used herein, the Class Period is September 18, 2015 through present and the Class consists of and is defined as follows:

> All Florida healthcare providers who (a) are/were the assigns or assignees of covered insureds under an automobile insurance policy issued by GEICO as described in Fla. Stat. Sec. 627.736(1)(a); and (b) who at any time during the Class Period submitted bills to GEICO for payment of PIP

> benefits for medical and/or diagnostic services; and (c) GEICO failed to utilize the highest applicable Medicare Part B payment schedule thereby leaving amounts due and owing pursuant to Florida Statute Sec. 627.736(5)(a)(2)
>
> Excluded from the Class are persons and/or entities who timely opt-out of this proceeding using the correct protocol for opting-out that will be formally established by this Court; the Defendant; any subsidiary or affiliate of the Defendant; the directors, officers and employees of the Defendant or its subsidiaries or affiliates; any entity in which any excluded person has a controlling interest; the legal representatives, heirs, successors and assigns of any excluded person; and member of the federal judiciary including the judge assigned to this case along with any persons within the third degree of consanguinity to such judge.

29. Plaintiff and class members reserve the right to amend the class definition as discovery proceeds and to conform to the evidence.

30. Numerosity: While the exact number of members in the Class is unknown at this time, 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 the undeniable fact that Defendant sells thousands of insurance policies in the State of Florida and that there are thousands of Florida healthcare providers who submitted claims to Defendant for medical/diagnostic services and on information indicating that GEICO had, and has, a general business practice of improperly failing to utilize the highest applicable Medicare Part B payment schedule thereby affecting the rights of class members.

31. The members of the class and the number of members will be easily ascertained from GEICO's records through discovery and will consist of all insureds and assignees of insureds who submitted bills to the Insurer for medical benefits under PIP insurance where the approved amounts were determined in the manner previously described. This data will enable the Plaintiff to easily determine common action and liability as well as damages for all putative Class members' claims.

32. Commonality: There is a question of law and fact that is common to and affect the rights of all Class members. Such questions of law and fact common to the Class include the following:

(a) Whether GEICO breached its insurance policy;

(b) Whether GEICO has improperly interpreted and/or applied Section 627.736(5)(a)(2), Florida Statutes (2012-2019);

(c) What is the "allowable amount under the applicable schedule of Medicare Part B for 2007" as that phrase is used in Florida Statute Section 627.736(5)(a)(2) (2012-2019);

(d) Whether the Plaintiff and the Class are entitled to declaratory relief to determine the parties' respective rights and obligations concerning the provisions of GEICO's policy.

33. Typicality: The claim of the class representative is typical of the claims that would be asserted by other members of the class in that, in proving its claim, Plaintiff will prove the claims of all class members. Plaintiff, and each class member, is an insured or assignee of an insured who has submitted a claim for the payment of no-fault benefits that was accepted as a covered loss or expense under Defendant's Policy but not approved for payment pursuant to the highest applicable Medicare Part B payment schedule. The class representative will seek declaratory relief to determine its rights and the rights of others similarly situated pursuant to Florida law.

34. Further, other individual plaintiffs may elect to join this action upon such grounds as the Court may set forth and these individual plaintiffs will likewise have issues that are common to those of all other Class members.

35. Adequacy: The Plaintiff is a health care provider doing business in Florida that has no conflicts of interest and will fairly and adequately represent and protect the interests of the

Class. Additionally, the class representative is fully aware of its responsibilities as class representative and has retained experienced counsel fully capable of, and intent upon, vigorously pursuing the action. Class counsel has extensive experience in class and/or insurance claims and litigation.

36. Superiority: A Class action is superior to other methods for the fair and efficient adjudication of this controversy, since individual joinder of all of the members of the Class is impracticable and no other group method of adjudication of all claims asserted herein is more efficient and manageable for at least the following reasons:

(a) Absent a Class, the members of the Class will continue to suffer damages and GEICO's unlawful conduct will continue without remedy;

(b) Judicial economy is well served by concentrating all of the Class members' claims in one forum in one proceeding.

(c) Given the size of individual Class members' claims, few, if any, Class members could afford to or would seek legal redress individually for the wrongs GEICO has committed against them, and absent Class members have no substantial interest in individually controlling the prosecution of individual actions;

(d) When the liability of GEICO has been adjudicated, claims of all Class members can be administered efficiently and/or determined uniformly by the Court; and

(e) The action presents no difficulty that would impede its management by the Court as a Class action which is the best available means by which Plaintiff and the members of the Class can seek redress for the harm caused to them by GEICO.

37. Under Count I below, Plaintiff brings this Class action on the grounds that GEICO's actions or omissions as alleged herein, are generally applicable to all members of the Class thereby making declaratory relief concerning the Class as a whole particularly appropriate. GEICO systematically and routinely improperly interpreted and/or applied its policies and Florida Statute Sec. 627.736(5)(a)(2), adversely affecting Plaintiff and each Class member.

38. Because Plaintiff seeks declaratory relief for Class members the prosecution of separate declaratory actions by individual members of the Class would create a risk of inconsistent or varying adjudications with respect to individual Class members that would establish incompatible standards of conduct for GEICO. Further, adjudications with respect to individual Class members would, as a practical matter, be dispositive of the interests of other members of the Class who are not parties to the adjudication and may impair and impede their ability to protect their interests.

COUNT I

CLASS ACTION FOR DECLARATORY RELIEF

39. Plaintiff and the Class members reallege paragraphs 1 through 38 above as if specifically set forth herein.

40. This case involves an actual controversy within the jurisdiction of this Court and Plaintiff and the members of the Class ask the Court to declare the rights of the Plaintiff and all Class members.

41. During the Class period, Plaintiff and the class members have submitted claims for no-fault benefits to Defendant for payment under Defendant's automobile insurance policy.

42. Defendant entered into valid insurance policies with its insureds whose benefits were properly assigned to Plaintiff and Class members. Defendant's insurance policies were written by the Defendant and provided PIP benefits including a payment provision pursuant to Sec. 627.736(5)(a), Florida Statutes (2012-2019).

43. Defendant, on all claims subject to the class, has made the determination that the submitted no-fault claims were covered losses under the applicable policy.

44. Florida Statute Sec. 627.736(5)(a) governs the manner in which the Defendant was required to reimburse the no-fault claims. The statute mandates that the payment amount "may

not be less than the allowable amount under the applicable schedule of Medicare Part B for 2007 for medical services, supplies, and care subject to Medicare Part B."

45. Defendant did not utilize the applicable 2007 Medicare Part B payment schedule to determine the approved amount for the CPT codes billed.

46. Instead, Defendant has, and continues to utilize the Medicare Part B participating physicians fee schedule to approve the CPT codes.

47. Defendant's failure to utilize the highest applicable 2007 Medicare Part B payment schedule to determine the approved amount for the CPT codes billed is a violation of Sec. 627.736(5)(a)(2), Florida Statute (2012-2019).

48. As a result of Defendant's failure to comply with the payment provision of Florida Statute Sec. 627.736(5)(a)(2) (2012-2019), Plaintiff and the class members have not received the full benefit of the contractual coverage promised by Defendant and in contrast to its Policy language, has adversely affected both Plaintiff's and other class insureds rights to coverage under the no-fault provisions of the Policy.

49. Accordingly, Plaintiff and Class members are in doubt as to their rights, and a bona fide present controversy exists between the Plaintiff and Class members, and the Defendant concerning the proper interpretation and/or application of the PIP Statute and the language of Defendant's insurance policy, and the parties' respective rights and obligations thereunder, with respect to issues which include but are not limited to whether, during the Class Period, the Defendant was lawfully authorized to reduce payments made to Class members as a result of its failure to utilize the highest applicable Medicare Part B payment schedule in the reimbursement of the claim(s).

50. The rights, status, or other equitable or legal relations of the parties are affected by Sec. 627.736(5)(a)(2), Florida Statutes. Accordingly, pursuant to Sec. 86.011, Florida Statutes (2019), the Plaintiff and Class members may obtain a declaration of rights, status, or other equitable or legal relations thereunder.

51. Lastly, claims for declaratory actions are not subject to the pre-suit demand letter requirement of Sec. 627.736(10) Florida Statutes, as the relief sought in this count is simply a declaration of the Class Plaintiff's rights under Sec. 627.736(5)(a)(2), Florida Statute (2012-2019) and Defendant's policy and not an "action for benefits".

52. Plaintiff has retained the undersigned counsel to prosecute this action and is entitled to the recovery of its reasonable attorneys' fees and costs pursuant to Fla. Stat. Sec. 627.428 and/or 627.736(8), and legal assistant fees pursuant to Fla. Stat. Sec. 57.104.

COUNT II

CLASS ACTION FOR INJUNCTIVE RELIEF

53. This is a common law action for injunctive relief brought by the Plaintiff and the members of the Class against the Defendant.

54. Plaintiff and the members of the Class repeat and reallege each and every allegation contained in paragraphs 1 – 53 above as if the same were fully alleged herein.

55. The Defendant has violated Sec. 627.736(5)(a)(2), Florida Statutes (2012-2019) as set forth above and, as a result, has violated the cognizable legal rights of the Plaintiff and Class members pursuant to the Defendant's insurance policies and the PIP Statute.

56. Defendant continues to retain monies due and owing to Plaintiff and Class member for medical services provided by Plaintiff and Class members which should have been paid by Defendant from its insureds' Personal Injury Protection benefits.

57. The Plaintiff and Class members have suffered and will continue to suffer irreparable injury if the Defendant is permitted to continue its violation of Florida Statute Section 627.736(5)(a)(2) as a basis to unlawfully reduce its payment for valid bills for medical services provided to the Defendant's insureds. Examples of such irreparable injury include but are not limited to the following:

(a) Absent injunctive relief requiring the Defendant to cease and desist from its continuing wrongful conduct, the Plaintiff and Class members are left in the untenable position of having to address the Defendant's continuing and ongoing wrongs with a multiplicity of lawsuits in the various different county courts across the State of Florida, with the risk of suffering inconsistent and varying results.

(b) The PIP statute mandates that the Defendant utilize the highest applicable 2007 Medicare Part B payment schedule to determine the approved amount for the CPT codes billed, and the Defendant should not be permitted to reduce payment of claims submitted to it by failing to use said schedule.

(c) By such conduct, the Defendant is preventing, delaying and hindering its insureds' abilities to receive insurance coverage to which they are entitled, and this will lead to incalculable or unascertainable losses to third parties.

(d) The Defendant's continuing and ongoing unlawful conduct places its own PIP insureds at risk that health care providers will refuse to treat them without receiving full payment in advance of receiving health care services needed to properly treat and/or diagnose their health condition, and this will lead to incalculable or unascertainable losses to third parties.

58. The Plaintiff and Class members have a clear legal right to seek an injunction requiring that the Defendant cease and desist from continuing to violate Florida Statute Sec. 627.736(5)(a)(2) by unlawfully reducing payment of valid bills for medical and diagnostic services provided to the Defendant's PIP insureds.

59. The language of the PIP Statute is clear and unambiguous and, as a result, Plaintiff's and Class members' claims are meritorious and have a substantial likelihood of success. Despite the plain and statutory language, Defendant has violated and continues to violate the PIP Statute to the detriment of the Plaintiff and Class members.

60. The Plaintiff and the Class members have no other adequate remedy at law by virtue of the Defendant's course of conduct.

61. Irreparable injury has been suffered and will continue to be suffered unless a permanent injunction is issued to prevent the Defendant from continuing to unlawfully limit Plaintiff and Class members PIP benefits under their insurance policies with the Defendant in direct violation of Florida Statute Sec. 627.736(5)(a)(2).

62. Any potential injury to Defendant attributable to an injunction providing that it must follow the clear and unambiguous language of Florida Statute Sec. 627.736(5)(a)(2) is outweighed by the injury that Plaintiff, Class members and the public will suffer if such injunction is not issued, and such injunction would not be adverse to the public interest.

63. The Plaintiff and the Class members have no other adequate remedy at law.

64. The injunctive relief requested by the Plaintiff and the Class members would not be contrary to the interest of the public generally.

65. The Plaintiff has retained the undersigned counsel to prosecute this action and is entitled to the recovery of its reasonable attorney's fees and costs pursuant to Sections 627.428 and/or 627.736(8), Florida Statutes.

PRAYER FOR RELIEF

WHEREFORE, the Plaintiff, individually and on behalf of all others similarly situated, pursuant to Chapter 86, Florida Statutes, hereby respectfully requests this Honorable Court to award the following relief against the Defendant:

a. For an order that this action is properly maintainable under Fla. R. Civ. P. 1.220(b)(1)(A), (b)(2) and/or (b)(3) and appointing the Plaintiff to represent the Class defined herein;

b. For an order appointing the undersigned law firms as class counsel;

c. For an order approving the Plaintiff as class representative in this action along with such other persons whom the Court may permit to join as class representatives;

d. For certification of the Class set forth herein and for an order requiring reasonable and adequate notice to be given to prospective class members following certification;

e. For a declaratory judgment under Count I declaring the parties' respective rights and obligations under Florida Statute Sec. 627.736(5)(a)(2) And the Defendant's policy including, but not limited to, an explanation of the Medicare Part B payment schedule(s) that the Defendant is required to utilize when determining an approved amount;

f. For temporary and/or permanent injunction under Count II requiring the Defendant to cease and desist from continuing to utilize and rely upon an erroneous interpretation of Section 627.736(5)(a)(2), Florida Statutes (2012-2019), which results in the unlawful reduction of valid bills for medical and diagnostic services provided to the Defendant's insureds in Florida;

g. For an award requiring the Defendant to pay the Plaintiffs reasonable attorneys' fees and costs pursuant to Sections 627.428 and/or 627.736(8) Florida Statutes; and legal assistant fees pursuant to Fla. Stat. 57.104; and

h. Such other relief as the Court deems fair and reasonable.

DEMAND FOR JURY TRIAL

Plaintiff, on behalf of itself and the Class members, hereby demands a trial by jury on all issues so triable.

Dated: September 18, 2020

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Exhibit “A”

Assignment of Benefits

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DIAGNOSTIC SERVICES

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1800 Forest Hill Blvd. Suite A1
West Palm Beach, FL. 33406

ASSIGMENT OF BENEFITS FORM

Patient: **LUIS A PINO**

I, the undersigned patient hereby assign the rights and benefits of insurance of the applicable personal injury protections medical payments, and other insurance to All X Ray Diagnostic Services, Corp for services and supplies rendered for treatment of personal injuries sustained in the accident/incident of 01/03/2020 to the undersigned patient and covered by Personal Injury Protection (PIP) coverage or other insurance. In accordance with Florida Statue 627.736(5) I agree to pay any applicable deductible or co-payment not covered by PIP or other insurance coverage. I authorize the Provider to release medical information required.

This assignment includes, but is not limited to all rights to collect benefits directly from the insurance company for services that I have received, and all rights to proceed against the insurance company obligated to provide benefits in any action including legal suit, if for any reason the insurance company fails to make payments of benefits of which lain due. Specially, this assignment also includes the right to collect payments for the reasonable cost a connected with copying and mailing records to the insurer's request and in accordance with Florida Statue 627.736(6). This assignment also includes any right to recover attorney's fees and costs for such action brought by the provider as Patient's Assignee. I agree that All X Ray Diagnostic Services, Corp. may select any attorney handling my Personal Injury/Bodily Injury claim or case.

I hereby instruct the insurance carrier that in the event the subject medical benefits are disputed for any reason that the amount of benefits claimed is to be aside and not disbursed until the dispute is resolved. As part of this assignment of benefits, I further instruct the insurance carrier to notify All X Ray Diagnostic Services, Corp. immediately after any dispute as to the payment so that is may preserve and exercise its legal rights. Also, in addition, to notifying my legal representative, and me I instruct the insurance carrier to immediately notify All X Ray Diagnostic Services, Corp, of any scheduled examinations, under another or independent medical examinations. I authorized and instruct the insurance carrier to provide an up-top-date payout register t All X Ray Diagnostic Services, Corp upon request. I understand that any person who knowingly and with intent to injure, defraud or deceive any insurance company files a statement containing any false, incomplete, or misleading information is guilty of a felony of the third degree. I have read the information herein and it is true the best of my knowledge and belief.

x
Patients's Signature

Date: 01/21/2020

The undersigned provider on behalf of ALL X RAY DIAGNOSTIC SERVICES, CORP. here by accept assignment of the insurance rights and benefits for the services rendered to LUIS A [illegible] directly to ALL X RAY DIAGNOSTIC SERVICES,CORP. under GEICO insurance coverage.

X_____
Witness Signature

X_ Creado la 1ra hoja

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