

**IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT
IN AND FOR MIAMI-DADE COUNTY, FLORIDA
COMPLEX BUSINESS LITIGATION DIVISION**

CASE NO.: 2020-20117-CA-01

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

Plaintiff,

CLASS REPRESENTATION

v.

GEICO INDEMNITY COMPANY,
GEICO GENERAL INSURANCE
COMPANY, GEICO CASUALTY
COMPANY and GOVERNMENT
EMPLOYEES INSURANCE
COMPANY

Defendant.

_____ /

**DEFENDANTS' ANSWER AND AFFIRMATIVE DEFENSES
TO PLAINTIFF'S THIRD AMENDED CLASS ACTION COMPLAINT**

Defendants, GEICO Indemnity Company, GEICO General Insurance Company, GEICO Casualty Company and Government Employees Insurance Company (collectively "GEICO"), respond as follows to the correspondingly numbered paragraphs contained in Plaintiff's Third Amended Class Action Complaint (Dkt. 135) (the "Complaint"):

JURISDICTION, PARTIES, AND VENUE

1. GEICO acknowledges that Plaintiff attempts to assert and seek the identified claims and relief, but denies that Plaintiff is entitled to the requested relief.
2. GEICO lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph, and they are therefore denied.

3. GEICO lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph, and they are therefore denied.

4. GEICO denies that any of the entities identified in this paragraph are Maryland corporations. GEICO admits the remaining allegations contained in this paragraph.

5. GEICO admits the allegations contained in this paragraph for venue purposes only.

6. GEICO denies the allegations contained in this paragraph.

NATURE OF THE ACTION

7. GEICO acknowledges that Plaintiff attempts to assert and seek the identified claims and relief, but denies that Plaintiff is entitled to the requested declaratory relief.

8. GEICO acknowledges that Plaintiff attempts to assert and seek the identified claims and relief, but denies that Plaintiff is entitled to the requested relief for purported breach of contract.

GENERAL FACTS PERTANING TO REPRESENTATIVE

9. GEICO admits that it received medical bills from Plaintiff seeking reimbursement for PIP benefits purportedly related to a January 3, 2020 motor vehicle accident (the "Accident"). GEICO otherwise lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph, and they are therefore denied.

10. GEICO admits that Luis Pino was insured under an automobile insurance policy that was issued by GEICO and in effect on the date of the Accident (the "Policy"). GEICO otherwise states that the Policy speaks for itself.

11. GEICO admits that it assigned claim number 0651065000000001 to Plaintiff's claim seeking PIP benefits following the Accident (the "PIP Claim").

12. GEICO admits that it received medical bills from Plaintiff seeking reimbursement for PIP benefits purportedly related to services provided on January 21, 2020 under the PIP Claim. GEICO otherwise lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph, and they are therefore denied.

13. GEICO lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph, and they are therefore denied.

14. GEICO lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph, and they are therefore denied.

15. GEICO admits that it received medical bills from Plaintiff seeking reimbursement for benefits under the PIP Claim, and states that the bills at issue and GEICO's payment speak for themselves.

16. GEICO admits that it received medical bills from Plaintiff seeking reimbursement for benefits under the PIP Claim, and states that the bills at issue and GEICO's payment speak for themselves.

17. GEICO admits that GEICO provided an Explanation of Review to Plaintiff relating to the PIP Claim, and states that the referenced Explanation of Review speaks for itself.

18. GEICO admits that GEICO provided an Explanation of Review to Plaintiff relating to the PIP Claim, and states that the referenced Explanation of Review speaks for itself.

19. GEICO states that this paragraph contains legal conclusions to which no response is necessary. To the extent a response is deemed necessary, GEICO states that the referenced statute and governing Policy speak for themselves.

20. GEICO states that this paragraph contains legal conclusions to which no response is necessary. To the extent a response is deemed necessary, GEICO states that the referenced statute and governing Policy speak for themselves.

21. GEICO states that the portion of the referenced statute speaks for itself, and otherwise denies the allegations contained in this paragraph.

22. GEICO states that this paragraph contains legal conclusions to which no response is necessary. To the extent a response is deemed necessary, GEICO states that the referenced authority speaks for itself, and otherwise denies the allegations contained in this paragraph.

23. GEICO states that this paragraph contains legal conclusions to which no response is necessary. To the extent a response is deemed necessary, GEICO states that the referenced authority speaks for itself, and otherwise denies the allegations contained in this paragraph.

24. GEICO states that this paragraph contains legal conclusions to which no response is necessary. To the extent a response is deemed necessary, GEICO states that the referenced authority speaks for itself, and otherwise denies the allegations contained in this paragraph.

25. GEICO states that this paragraph contains legal conclusions to which no response is necessary. To the extent a response is deemed necessary, GEICO states that the referenced authority speaks for itself, and otherwise denies the allegations contained in this paragraph.

26. GEICO states that this paragraph contains Plaintiffs' contentions and legal conclusions to which no response is necessary. To the extent a response is deemed necessary, GEICO states that the referenced authority speaks for itself, and otherwise denies the allegations contained in this paragraph.

27. GEICO admits that it has issued policies to other Florida residents as alleged, and otherwise denies the allegations contained in this paragraph.

CLASS ACTION ALLEGATIONS¹

28. GEICO acknowledges that Plaintiff attempts to assert its claims on behalf of itself and the proposed class, but denies that these purported claims are proper for class treatment in contested litigation. GEICO otherwise denies the allegations contained in this paragraph.

29. GEICO acknowledges that Plaintiff attempts to assert its claims on behalf of itself and the proposed class, but denies that these purported claims are proper for class treatment in contested litigation.

30. GEICO acknowledges that Plaintiff attempts to reserve the right to amend the proposed class definition as stated.

31. GEICO denies the allegations contained within this paragraph in connection with contested litigation.

32. GEICO denies the allegations contained within this paragraph in connection with contested litigation.

33. GEICO denies the allegations contained within this paragraph in connection with contested litigation.

34. GEICO denies the allegations contained within this paragraph in connection with contested litigation.

35. GEICO denies the allegations contained within this paragraph in connection with contested litigation.

36. GEICO lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph, and they are therefore denied.

¹ GEICO reserves the right to challenge the sufficiency of Plaintiff's class allegations, and the class treatment of this case in contested litigation, as necessary at the appropriate stage of this litigation.

COUNT I – CLASS ACTION FOR DECLARATORY RELIEF

37. GEICO reasserts its responses to paragraphs 1 through 36 above.

38. GEICO acknowledges that Plaintiff attempts to assert and seek the identified claims and relief, but denies that Plaintiff is entitled to the requested relief.

39. GEICO admits that it received medical bills from Plaintiff seeking reimbursement for benefits under the PIP Claim, and states that the bills at issue and GEICO's payment speak for themselves.

40. GEICO states that the referenced policy speaks for itself.

41. GEICO states that this paragraph contains Plaintiffs' contentions and legal conclusions to which no response is necessary.

42. GEICO states that this paragraph contains Plaintiffs' contentions and legal conclusions to which no response is necessary. To the extent that a response is deemed necessary, GEICO states that the referenced statute speaks for itself.

43. GEICO states that the referenced statute speaks for itself.

44. GEICO states that this paragraph contains Plaintiffs' contentions and legal conclusions to which no response is necessary. To the extent that a response is deemed necessary, GEICO states that the referenced statute speaks for itself.

45. GEICO denies Plaintiff's alleged characterization of GEICO's position as to the allegations in the previous paragraph.

46. GEICO states that this paragraph contains Plaintiff's contentions and legal conclusions to which no response is necessary. To the extent a response is deemed necessary, GEICO denies the allegations contained in this paragraph.

47. GEICO lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph, and they are therefore denied.

48. GEICO states that this paragraph contains Plaintiff's contentions and legal conclusions to which no response is necessary. To the extent a response is deemed necessary, GEICO states that the referenced statute speaks for itself, and otherwise denies the allegations contained in this paragraph.

49. GEICO denies the allegations contained within this paragraph.

50. GEICO lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph, and they are therefore denied.

GEICO further denies that Plaintiff is entitled to the relief requested in the WHEREFORE clause for Count I in Plaintiff's Complaint.

COUNT II – CLASS ACTION FOR BREACH OF CONTRACT

51. GEICO reasserts its responses to paragraphs 1 through 6 and 8 through 36 above.

52. GEICO acknowledges that Plaintiff attempts to assert a claim for breach of contract on behalf of himself and the proposed class. GEICO denies that Plaintiff (individually or on behalf of a proposed classes) is entitled to the relief requested.

53. GEICO admits the Plaintiff was insured under an automobile insurance policy that was issued by GEICO and in effect on the date of the Accident (the "Policy"). GEICO otherwise states that the Policy speaks for itself.

54. GEICO denies the allegations contained in this paragraph.

55. GEICO acknowledges that a purported assignment is attached to the Complaint as Exhibit B. GEICO otherwise lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph, and they are therefore denied.

56. GEICO states that the referenced policies speak for themselves.
57. GEICO denies the allegations contained in this paragraph.
58. GEICO denies the allegations contained in this paragraph.
59. GEICO denies the allegations contained in this paragraph.
60. GEICO lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph, and they are therefore denied.

GEICO further denies that Plaintiff is entitled to the relief requested in the WHEREFORE clause for Count II in Plaintiff's Complaint.

GEICO further denies any allegations contained in Plaintiff's Complaint that are not specifically admitted above. GEICO demands a jury trial on all issues so triable.

AFFIRMATIVE DEFENSES

Without assuming the burden of proof as to any matter on which Plaintiff and/or the proposed class members bear the burden, GEICO asserts the following affirmative defenses to Plaintiff's Complaint:

1. Plaintiff's Complaint fails to state a cause of action for declaratory relief.
2. Plaintiff's Complaint fails to state a cause of action because the allegations, claims asserted, and the requested relief are inconsistent with the governing insurance policy.
3. Plaintiff's Complaint fails to state a cause of action because the allegations, claims asserted, and the requested relief are inconsistent with the governing Florida statutes and law.
4. Some or all of the claims of Plaintiffs and the proposed class members may be barred by the doctrines of waiver, estoppel, or ratification.
5. Plaintiff's claims are barred by the failure to satisfy the pre-suit demand and notice requirements set forth in Florida Statute 627.736.

6. Each claim of Plaintiff is subject to further review and challenge, and therefore a final judgment cannot be rendered as to some or all such claims.

7. Plaintiff's claims are barred to the extent that Plaintiff failed to mitigate its alleged damages.

8. Plaintiff's claims may be barred due to the exhaustion of benefits under the applicable insurance coverage.

GEICO reserves the right to assert additional defenses as its investigation and discovery proceed in this case.

GEICO further specially reserves the right to assert the above defenses, as well as additional applicable defenses, as to the claims of each proposed class member based upon the individual facts and circumstances applicable to each separate claim as necessary at the appropriate stage of this litigation.

Respectfully submitted,

/s/ Drew Krieger

John P. Marino (FBN: 814539)
Kristen L. Wenger (FBN: 92136)
Drew Krieger (FBN: 13579)
1301 Riverplace Blvd. Suite 1000
Jacksonville, Florida 32207
Phone: (904) 792-8933
Facsimile: (904) 467-3461
john.marino@rivkin.com
kristen.wenger@rivkin.com
drew.krieger@rivkin.com

Counsel for Defendants

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been filed through the Florida Court's E-filing Portal this 17th day of May, 2024, which will send a copy of the filed documents to:

Melisa Coyle, Esq.
The Coyle Law Firm, P.A.
407 Lincoln Road, Suite 8-E
Miami Beach, Florida 33139
mcoyle@thecoylelawfirm.com
service@thecoylelawfirm.com

Kenneth Dorchak, Esq.
Buchalter, Hoffman & Dorchak Law Firm
1075 NE 125th St. Suite 202
North Miami, Florida 33161
kdorchak@bhdllawfirm.com

Counsel for Plaintiff

Mac S. Phillips, Esq.
Phillips Tadros, P.A.
12 SE 7th Street, Suite 803
Fort Lauderdale, Florida 33301
Mphillips@phillipstadros.com
service@phillipstadros.com

Co-Counsel for Plaintiff

/s/ Drew Krieger

Attorney