

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

2013-SC-011088-O

M D DIAGNOSTIC SPECIALIST
LLC

Plaintiff,

vs.

NATIONAL GENERAL
INSURANCE ONLINE INC
INTEGON INDEMNITY
CORPORATION

Defendant.

**ORDER ON PLAINTIFF'S MOTION FOR FINAL SUMMARY JUDGMENT AND
DEFENDANT'S MOTION FOR FINAL SUMMARY JUDGMENT**

This cause came on for consideration by the undersigned on the competing Summary Judgment Motions of the Plaintiff and Defendant, a hearing was held on September 9, 2015, and court having heard argument and considered the motion; the Court finds as follows:

1. This is an action brought for the nonpayment of PIP benefits.
2. Annisha Sharpe, also known as Annisha Camillia Jones (assigned rights to Plaintiff), was involved in a traffic crash on December 10, 2012. In that crash she received injuries for which she received medical treatment from Plaintiff.
3. The parties agree the following facts are undisputed:
 - a. The traffic crash occurred on December 10, 2012.
 - b. Ms. Sharpe was the driver of and sole occupant of the vehicle involved in the traffic crash, a 2013 Hyundai Accent. Ms. Sharpe was co-owner and primary driver of the Hyundai Accent. In fact, she used the car as her everyday car. The co-owner of the car was her fiancé, Mr. Kerry Jones.

- c. At the time of the accident, the Hyundai Accent was insured under an Esurance Property and Casualty Insurance Company policy¹ purchased by Mr. Jones.
- d. The Esurance policy listed Mr. Jones as the named insured. At the time of the accident, Ms. Sharpe was not included on the policy. She was added to the policy a few months after the traffic crash.
- e. At the time of the traffic crash, Ms. Sharpe was listed as an additional driver on the PIP policy² issued by the Defendant to her mother, Margaret Joseph. In addition, Ms. Sharpe was residing in her mother's home.
- f. The Hyundai Accent owned by Mr. Jones and Ms. Sharpe was not a listed vehicle under Ms. Joseph's Integon policy.
- g. Under the DEFINITIONS in Ms. Joseph's Integon PIP policy found on Form Number 01823, a "'named insured' means: 'the person named in the Declarations of the policy and shall include the spouse if a resident of the same household.'" The named insured on the policy was Ms. Dorothy Joseph.
- h. The Exclusions section³ within Ms. Joseph's Integon PIP policy, reads:
EXCLUSIONS:
We do not provide Personal Injury Protection Coverage:
4. To any person, other than the named insured, if such person is the owner of a motor vehicle for which security is required under the Florida Motor Vehicle No-Fault Law as amended.
- 4. The parties have filed competing or dueling Motions for Partial Summary Judgement. The Plaintiff argues Ms. Sharpe should be covered by her mother's Integon policy on which she is listed as an additional driver. The Defendant argues there is a clear exclusion to that coverage and that Ms. Sharpe should be covered by Mr. Jones Esurance policy.

¹ Esurance Property and Casualty Insurance Company policy PAF1004588438.

² Integon Indemnity Policy 2001606108

³ On page 2 of 5 of the Personal Injury Protection Endorsement (Form Number 01823)

5. The goal behind the enactment of the no-fault law was to provide a comprehensive system of coverage for all people operating or riding in motor vehicles. Ward v. Nationwide Mut. Ins. Co., 364 So.2d 73 (Fla. 2d DCA 1978)
6. Under Florida statutes section 627.736, the required benefits of a PIP policy include the following:
 - (1) REQUIRED BENEFITS.—An insurance policy complying with the security requirements of s. 627.733 **must** provide personal injury protection to the named insured, relatives residing in the same household, persons operating the insured motor vehicle, passengers in the motor vehicle, and other persons struck by the motor vehicle and suffering bodily injury while not an occupant of a self-propelled vehicle, subject to subsection (2) and paragraph (4)(e).
7. Florida Statute section 627.736 requires an owner of a motor vehicle to provide comprehensive coverage, and the owner is typically covered by that policy because the owner is also the named insured. An issue only arises when the owner's car has appropriate PIP coverage but that coverage does not protect the owner as an insured. We believe that the exception to coverage provided in section 627.736(4)(d)(4)(a), only applies if the owner required to have insurance has failed to arrange for its purchase. It does not apply when the required insurance has been purchased and simply does not insure the owner. Pearson v. State Farm Mut. Auto. Ins. Co. 560 So.2d 416 (Fla. 2nd DCA 1990).
8. Under the PIP statute, Ms. Sharpe, as the operator of the Kia, must be covered by Mr. Jones' Esurance policy. While at the same time because she was a relative residing with Ms. Joseph, she was an additional driver on Ms. Jones' Integon policy and therefore covered by that policy as well.
9. Both parties cite to Marie Prevez-Falcone v. Enterprise Leasing Company of Florida 22 Fla Law Weekly Supp. 103b in support of their arguments. In that case, Ms. Prevez was driving a vehicle owned and self-insured by the Defendant, Enterprise Leasing. She was involved in a traffic accident and suffered injuries which required medical treatment. At the time of the accident, Ms. Prevez was the co-owner of a Kia vehicle. That vehicle was insured with Security National. On that policy her co-owner

was listed as the named insured and Ms. Prevetz was listed as an additional driver. Therefore, she was covered by the Security National policy only while occupying the Kia. The Security policy did not give her any coverage for any injuries occurring while she was occupying the Enterprise vehicle. The Court held :

“It is undisputed in the present case that the Kia Rio co-owned by Plaintiff was listed on the Security National Policy as an insured automobile, and the Plaintiff was listed as a “Driver on Policy”. It is also undisputed that Plaintiff was not “named insured” under the Security National policy and that she was also not a relative of the named insured. Plaintiff was *neither an operator* nor passenger of the Kia Rio and Plaintiff was not struck by the Kia Rio. Under the statute, Plaintiff would need to be an *operator* or occupant of the Kia Rio for PIP coverage to extend under the Security National policy. Additionally, under the Security National policy, as a driver of the *Defendant’s vehicle*, Plaintiff was not entitled to PIP benefits under the Security National insurance policy. There was no coverage under the Security National insurance policy by operation of Florida Statutes or the express terms of the Security National policy under the circumstances of this loss event. As such, and consistent with Florida Statutes, Defendant is required to provide PIP coverage since Plaintiff does not qualify for PIP coverage under any other policy, and was driving a vehicle owned by the Defendant. Since Defendant, as self-insured, is compelled to extend PIP coverage consistent with the PIP statute, Defendant is required to extend coverage to Plaintiff as a “person operating the insured motor vehicle”. See 627.736(1), Fla. Stat.

10. The facts in the Prevez-Falcone case are strikingly similar to the case at bar. Ms. Sharpe was covered by a policy as an additional driver(her mother’s policy). She was operating a vehicle that was covered by another’s policy(Mr. Jones’ policy). However, there is one important distinction. Ms. Prevez Falcone was operating a

rental vehicle. A vehicle in which she had no ownership interest or responsibility to insure or satisfy the requirements of section 627.733. Ms. Sharpe was operating a vehicle in which she owned a half interest. She was therefore required to ensure an insurance policy complying with the security requirements of s. 627.733 was purchased.⁴ As Ms Prevez-Falcone did not own the vehicle she was operating, she did not have to meet the same requirements. Ms. Prevetz-Falcone did ensure an insurance policy complying with the security requirements of s. 627.733 was purchased for the vehicle she owned. But she had no such duty for the vehicle she was driving. That distinction is important due to the exclusion in Ms. Joseph's Integon policy.

11. Ms Joseph's Integon policy has an exclusion for anyone who is not the named insured and "is the owner of a motor vehicle for which security is required under the Florida Motor Vehicle". Clearly, the exclusion in Ms. Joseph's Integon policy applies to Ms. Sharpe. No such exclusion existed in the Prevetz-Falcone facts.
12. Just as in Prevetz-Falcone, Ms. Sharpe was not entitled to PIP benefits under Ms. Joseph's Integon policy because of the express exclusion in the policy and the circumstances of the loss. As such, and consistent with Florida Statutes, Mr. Jones' Esurance policy is required to provide PIP coverage since Ms. Sharpe does not qualify for PIP coverage under any other policy, and was driving a vehicle she owned which was covered by that policy.
13. The statute only provides for the minimal coverage required under Florida's financial responsibility law. See Ins. Co. of N. America v. Avis Rent-A-Car System, Inc., 348 So.2d 1149 (Fla.1977).
14. Once the requirements of the statute were met, the parties were free to contract between themselves as to any additional responsibility. See Patton v. Lindo's Rent-A-Car, Inc., 415 So.2d 43 (Fla. 2d DCA 1982).

⁴ The Court agrees with the Plaintiff's argument that not all owners of a vehicle are required to satisfy the security requirements of 627.763. Not all owners of vehicle have to be "named insureds" on a policy" Mr. Jones satisfied the requirement for the Kia with his Esurance policy.

15. The statute does not require the insurer to provide coverage where the injured person is himself the owner of a motor vehicle with respect to which security is required, but it does not prohibit the parties from contracting between themselves for such coverage. Sturgis v. Fortune Ins. Co. 475 So.2d 127 (Fla. 2d DCA 1985).

THEREFORE it is hereby **ORDERED AND ADJUDGED**:

The Defendant's Motion for Final Summary Judgment is Granted.

The Plaintiff's Motion for Final Summary Judgment is Denied.

DONE AND ORDERED, Chambers at Orlando, Orange County, Florida, on this ____ day of _____, 20____.

Original Signed
APR 18 2016
STEVE JEWETT
County Judge

Steve Jewett
County Judge

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy was delivered to the below parties on this ____ day of _____, 20____.

M D Diagnostic Specialist Llc 45 E Sheridan Street Dania Beach Fl 33004

National General Insurance 200 East Gaines Street Tallahassee Fl 32399

Online Inc

Integon Indemnity Corporation No Known Address

Russel Martin Lazega, 45 E Sheridan St
Esquire Dania Beach Fl 33004
Henry R Ramos, Esquire Andrews Biernacki Davis Milev & Polsky Pa
One S Orange Ave Ste 403
Orlando Fl 32801

Jamee Valley, Judicial Assistant to Judge Steve Jewett

Conformed and Mailed
APR 18 2016
JAMEE VALLEY
Judicial Assistant

IN THE COUNTY COURT OF THE SEVENTEENTH JUDICIAL CIRCUIT,
IN AND FOR BROWARD COUNTY, FLORIDA

CASE NO.: 15-011330 COCE SI

POLD MEDICAL CENTER)
NORTH (A/A/O KRISTOPHER)
Plaintiff, ASHENBACK)

vs.)
INTEGON NATIONAL INSURANCE)
COMPANY,)
Defendant.)

ORDER

THIS CAUSE having come on to be heard on Defendant's/Plaintiff's MOTION FOR
SUMMARY FINAL JUDGMENT

Motion _____

and the Court having heard argument of counsel, and being otherwise advised in the Premises, it is
hereupon,

ORDERED AND ADJUDGED that said Motion be, and the same is hereby GRANTED.

THE COURT RELIES ON PEARSON V. STATE FARM MUT. AUTO. INS. CO,
560 So 2d 416 (2nd DCA 1990) AND PREVEZ-FALCON V
ENTER. LEASING CO, 2014 FLA CIR. LEXIS 1080 (Fla 4th Jud. Cir 2014)
Defendant shall submit an appropriate form of
Final judgment

DONE AND ORDERED in Chambers, at Hollywood, Broward County, Florida, this 9 day of

Sept, 20 16.


COUNTY JUDGE

Copies furnished: 1 DEFENDANT, PLAINTIFF