

**ON APPEAL TO THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT
OF THE STATE OF FLORIDA IN AND FOR PINELLAS COUNTY**

RICHARD A. LEVERONE, D.C., D.A.C.B.R., P.A.
d/b/a Diagnostic Imaging Consultants (on
assignment from Hannah Rawls),

KEN BURKE, CLERK OF COURT
PINELLAS COUNTY FLORIDA
INST# 2008228341 08/20/2008 at 08:51 AM
OFF REC BK: 16354 PG: 195-196
DocType:ORDER

Plaintiff/Appellant,
v.

**SMALL CLAIMS #06-007645CO-39
CIRCUIT APPEAL #07-000031AP-88B**

**PROGRESSIVE SELECT INSURANCE
COMPANY, formerly known as
Progressive Auto Pro Insurance Company,**

Defendant/Appellee.

ORDER AND OPINION

THIS CAUSE came before this Court pursuant to a Notice of Appeal filed by the Plaintiff/Appellant on June 25, 2007. The Court having reviewed the file, including the appellate briefs, and being otherwise advised in the premises,

FINDS AND ORDERS the following:

1. This Court has jurisdiction of this appeal.
2. This PIP case was filed by the Plaintiff on August 8, 2006, wherein the Plaintiff/Appellant alleged that the Defendant insurance company owed it \$98.18.
3. On March 16, 2007, the Defendant filed its Motion for Summary Judgment, and on June 18, 2007, the trial court entered its "Final Judgment" granting the Defendant's Motion for Summary Judgment. The Notice of Appeal was timely filed on June 25, 2007.
4. The essence of the Motion for Summary Judgment is that the Plaintiff violated §627.736(5)(a) of the Florida Statutes by charging the Defendant insurance company an amount in excess of what the Plaintiff "customarily" charges others, and, therefore, Plaintiff is barred from charging the Defendant a greater amount than it customarily charges for the same services.
5. Although there does not appear to be a factual dispute relative to the Plaintiff having reduced charges for other medical providers or direct-billed patients, the ultimate issue as to whether these apparently uncontroverted facts result in the Plaintiff violating his own

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“customary” billing practices is ultimately an issue to resolve by the trier of fact, and therefore, summary judgment is inappropriate.

6. At the hearing on the Motion for Summary Judgment, an Order Denying Motion for Summary Judgment in another case between these same two parties entered by another County Court judge in Pinellas County on May 1, 2007, was presented to the trial court herein. The trial court, however, makes no reference to this previous order denying a similar motion for summary judgment nor any attempt to distinguish this other case. (See: Richard Leverone, D.C., etc. v. Progressive Select Insurance Company, etc., County Court Case #06-007652CO-54.)
7. In view of the foregoing, this case is hereby reversed and remanded to the trial court.

DONE AND ORDERED in Chambers at St. Petersburg, Pinellas County, Florida, this
12 day of August, 2008.

Original opinion entered by Circuit Judges J. Thomas McGrady, Peter Ramsberger, and Amy M. V

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