SUPREME COURT OF THE STATE OF FLORIDA

DAN RAY WARREN, ET AL.,

Petitioners,

v.

STATE FARM MUTUAL AUTOMOBILE INSURANCE,

Respondent.
_____/

CASE NO.: SC 02-285

L.T. CASE NO.: 5D00-3064

REPLY BRIEF OF PETITIONER'S

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1INTRODUCTION

The following reference words and symbols will be used throughout this brief:

"Petitioners" will designate Dan Ray Warren and Dr. Jack Rotstein.

"Petitioner Warren" will designate Dan Ray Warren.

"Petitioner Rotsein" will designate Dr. Jack Rotstein.

"Respondent" will designate State Farm Mutual Automobile Insurance.

"5th DCA" will designate the Fifth District Court of Appeals.

"Florida Statutes" unless otherwise indicated will designate Florida Statues (1999)

ARGUMENT

Florida Statute Section 627.736(5)(b) which exempts medical charges for treatment mailed to an insurer more than thirty (30) days after the date of Treatment should be declared unconstitutional.

The thirty (30) day billing requirement should be considered a restriction upon PETITIONER ROTSTEIN'S access to the courts and, as such, is an unreasonable restriction rendering the statute unconstitutional. This requirement prevents PETITIONER ROTSTEIN from access to the courts to seek compensation for the reasonable, necessary and related to the accident medical care he gave to PETITIONER WARREN. The RESPONDENT has no obligation to prove or even show an attempt to prove that the medical care provided was neither, reasonable, necessary or related to the automobile accident. The RESPONDENT also has no obligation to prove that there is no way of telling whether the treatment was necessary and thereby refuses to pay. PETITIONERS have no rights to go into the court under this statute to prove the validity of their claim for compensation. The RESPONDENT or any insurer is given full leeway to refuse payment to any private medical provider even though the medical treatment was reasonable, necessary and related to an accident because the charges where mailed late.

Due to the fact that Florida Statute Section 627.736(5)(b) takes away the

PETITIONER'S rights, as well as all private medical provider's rights, to take this matter to court due to refusal to pay by an insurance company. There is no provision that if billing is mailed late they must prove that the medical care was legitimate, reasonable and necessary as well as related to the accident. They just automatically loose out, even if the bills were mailed one day over the date they could be refused and the private medical provider would have no recourse as the way this statute stands.

In his Final Judgment the Honorable Michael McDermott recognized this flaw in the statute as you can read in section E. In which he states,

> "State Farm presented no evidence that the subject charges were not reasonable, necessary, and related to the subject automobile accident and informed the court that it could not do so as its defense rested entirely upon Florida Statute Section 627.736(5)(b) (requiring non-hospital billed medical charges to be submitted within thirty (30) days of the date of service being billed). That statute does not require any reasonable proof that the charges are not reasonable, necessary, or related."

Florida Statute Section 627.736(5)(b) thereby is unconstitutional by taking away the PETITIONERS fundamental rights to seek relief, in the form of payment, in the Courts for services rendered that were reasonable, necessary and related to the automobile accident.

PETITIONER states there is no rational basis for requiring medical providers to submit their bills to insurance companies within 30 to 60 days from the date service is rendered and exempting Hospital Emergency and Ambulance services from this billing requirement. It does not benefit the insured as the RESPONDENT claims because it could cause a delay in treatment, if the Medical Provider must concern himself more with receiving payment of his services rather then providing prompt medical treatment for the patient.

The RESPONDENT is trying to make the point that Medical Providers would purposely give unnecessary treatment to a patient, and that this statute protects the Insured from that very thing. (See pages 19 and 20 of Respondent's Brief.) If the care of a medical provider was not related the Insured's motor vehicle accident, the insured would be required to pay the medical provider either through his private medical insurance or from his own pocket. However, it does not protect the insured in that when he goes for care or receives care from a medical provider for an accident and for some reason the medical provider is unable to bill the proper insurance company on time (the thirty [30] day requirement) he is unable to insure that the Medical Provider be compensated for his services. This puts the insured in the position that even though he paid for the insurance to cover such costs he must pay them out of his own pocket if the Medical Provider is going to be paid. This is unfair

to the insured who paid for the insurance to cover him incase of such an event. Even though the Statute states that the Insured would not be responsible, the honorable, prudent person would pay the medical provider for his services and thereby is not being protected.

It is as feasible to require hospitals and ambulance companies to submit their claims within 30 or 60 days of an accident as it is private medical providers, because they can very easily obtain a copy of the police report which documented the accident and lists the insurance companies of the parties. When driving a vehicle the driver is required to carry in the car or on his person his proof of insurance. Thereby, giving hospitals and ambulance companies even more of an advantage to the identity of the victim's insurance company then the doctor's, who see the patients in there office, often driven there by someone else. The patient who is usually in a great deal of pain and did not bring their insurance card or information because it was left in their car which is being repaired or left on the table at home with all the papers from the emergency room hospital visit. If requiring hospitals and ambulance companies to submit their bills within 30 days would not even be feasible in many cases, neither would it be feasible to require the same from the private medical provider.

The insurance company always has the right to contest whether or not the medical care provided was reasonable, necessary and related to the automobile

accident. If due to a physician's delay in sending bills to the insurance company the insurance company chooses to contest the bills, because they feel that there is no proof that the services where related in any way to the automobile accident or that they were reasonable or necessary they can do so. However, this statute denies Private Medical Providers their right to seek relief in the courts for medical services provided to a victim of an automobile accident while allowing hospitals and ambulance companies 5 years to seek payment for medical services provided and allowing insurance companies to refuse payment to all private medical providers under any circumstances if the bills are post dated even one day late.

The RESPONDENT's statement in reference to long-term unnecessary treatment is ridiculous in this case, since PLAINTIFF WARREN only had three (3) visits with PLAINTIFF ROTSTEIN. PLAINTIFF ROTSTEIN only saw PLAINTIFF WARREN for the time necessary to assist him and treat him for the injury he received in the automobile accident. An insurance company can and I am sure would dispute any long-term care which they felt was unnecessary and/or unrelated to an accident which an insured was involved in.

The treatment provided by medical providers and hospital emergency departments and ambulances are not inherently different. Since an accident victim going to a hospital emergency room and/or taken there in an ambulance quite often is

in just as much pain if not more when he goes to see a doctor to have the doctor assist him in alleviating the pain, that the patient is experiencing. They are both providing the same type of treatment, find out what is wrong with the patient and then treat the patient. The doctor however plays a more crucial role however because they attempt to get the patient back to where they were before the accident if possible.

Due to the above stated the PETITIONERS due not have equal protection as this Statute is written, for it takes away the medical providers right to seek just compensation for services rendered in the courts. The PETITIONERS right to due process is also infringed upon for the same reasons. The Statute as written does not give the PETITIONERS to seek payment of services rendered.

Florida Statute Section 627.736(5)(b) does not fulfill the legislative objective and is discriminatory and arbitrary and oppressive to the private medical provider, who by Florida Statute Section 627.736(5)(b) loses his right to seek relief in the courts for monetary damages, for services rendered that were reasonable, necessary, and related to the automobile accident. It discriminates between different types of medical providers who perform the same type of services to an injured insured. There is no real basis or rational basis to distinguish between one type of medical provider and another. It prevents the private medical providers from being able to seek relief from the courts for the services which they performed in good faith.

There is no real benefit to the insured for Florida Statute Section 627.736(5)(b). The only one who benefits is the Insurance Companies and discriminates against all other parties. It thereby should be declared unconstitutional as written.

It would seem that based upon Florida Statute Section 627.736(5)(b) that the legislature was trying to avoid bulk billing. But because Florida Statute Section 627.736(5)(b) does not discuss bulk billing it unconstitutionally discriminates against physicians one time only services to injured claimants. What if the injured claimant gave the wrong information to the physician to wit was confused and perhaps gave an insurance information regarding his prior company, and forgot that he had recently obtained new coverage with a new company.

Florida Statute Section 627.736(5)(b) is discriminatory and does restrict access to the courts to the PETITIONERS to request payment of reasonable, necessary and related services.

CONCLUSION

Florida Statute 627.736 does violate the Federal and Florida Constitutions. It denies PETITIONER ROTSTEIN'S access to the courts, there is no rational basis for the statute and the statute does not bare any rational relationship to a legitimate State purpose. For this reason, the opinion of the 5th District Court of Appeals should be reversed and the original opinion of the Honorable Court Judge Michael McDermitt should be reinstated. An award of Appellate Attorney fees and costs should be award to the PETITIONERS.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. Mail this _____ day of October, 2002 to: Karen A. Barnett, Esq., 201 E. Kennedy Boulevard, Suite 1518, Tampa, FL 33602 and the original and seven (7) copies to the Clerk of the Court, Supreme Court Building, 500 South Duval Street, Tallahassee, FL 32399-1927.

CERTIFICATE OF TYPEFACE COMPLIANCE

I HEREBY CERTIFY that the size and style of this brief is Times New Roman, 14 point, in compliance with Florida Rule of Appellate Procedure 9.210(a)(2).

Respectfully submitted,

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