

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA  
FIFTH DISTRICT

NOT FINAL UNTIL TIME EXPIRES TO  
FILE MOTION FOR REHEARING AND  
DISPOSITION THEREOF IF FILED

UNITED AUTOMOBILE INSURANCE COMPANY,

Appellant,

v.

Case No. 5D20-2442

AFO IMAGING D/B/A ADVANCED DIAGNOSTIC  
GROUP A/A/O RUBEN TORRES,

Appellee.

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Opinion filed July 2, 2021

Appeal from the County  
Court for Orange County,  
Tina Caraballo, Judge.

Michael J. Neimand, Miami,  
for Appellant.

Eduardo Rodriguez and Brad  
Bader, of Pardy & Rodriguez,  
P.A., Orlando, for Appellee.

SASSO, J.

This case presents the issue of whether an insurer is barred from  
contesting a claim for personal injury protection (“PIP”) benefits if the insurer

fails to deny or pay a claim within the statutorily defined period for investigating a fraudulent insurance act. We conclude that although section 627.736(4)(b) and (i), Florida Statutes (2020), establishes a timeframe for investigating claims and making payments, those provisions do not bar an insurer from contesting the claim. As a result, we reverse the judgment entered in favor of Appellee, AFO Imaging d/b/a Advanced Diagnostic Group (“Advanced Diagnostic”), and remand for entry of a judgment in favor of Appellant, United Automobile Insurance Company (“United Auto”).

### FACTS

On July 7, 2018, Ruben Torres entered into a contract with United Auto for the provision of PIP benefits for a six-month term. The next day, Torres was allegedly involved in a motor vehicle accident in which he sustained personal injuries. Following the accident, on October 4, 2018, Torres underwent an MRI at Advanced Diagnostic and executed an assignment of his PIP benefits to Advanced Diagnostic.

On October 9, 2018, United Auto conducted an examination under oath of Torres. During the examination, Torres disclosed that his father was the owner of the vehicle at the time he entered into the insurance contract with United Auto and at the time of the accident.

A few days later, United Auto received notice of Advanced Diagnostic's claim. United Auto took no action until December 10, 2018, when it sent a letter directly to Torres stating its intent to deny the PIP benefits under his policy and to rescind the policy based upon a material misrepresentation in his application. On December 20, 2018, United Auto sent a notice of rescission to Torres and provided a full refund of the insurance premium.

On May 21, 2019, Advanced Diagnostic filed suit against United Auto for its failure and refusal to timely pay for PIP benefits for the medical services it provided to Torres on October 4, 2018. In its answer, United Auto asserted a material misrepresentation affirmative defense based on Torres' failure to disclose that he was not the actual owner of the insured vehicle.

Ultimately, the parties filed competing motions for summary judgment. Advanced Diagnostic argued that, pursuant to section 627.736(4)(b) and (i) and the policy, which incorporated each of these provisions, United Auto was barred from contesting the claim because it failed to pay or deny the claim within thirty days after receiving notice of the loss. United Auto, on the other hand, argued that as a result of the material misrepresentations made by Torres it was entitled to rescind the policy. United Auto supported the facts alleged within its motion with affidavits that were unrefuted by Advanced Diagnostic.

On October 28, 2020, the trial court issued its order denying summary judgment for United Auto and granting summary judgment for Advance Diagnostic. In entering judgment in favor of Advance Diagnostic, the trial court determined that it was required to follow *Century-National Insurance Co. v. Halifax Chiropractic & Injury Clinic ex rel. Rantanen Bloodworth*, 28 Fla. L. Weekly Supp. 30 (Fla. 9th. Cir. Ct. Jan. 22, 2020), and concluded that because United Auto rescinded the contract outside both the thirty-day period of time for the initial investigation and the additional sixty days given to an insurer to investigate a fraudulent insurance act pursuant to section 627.736(4)(b) and (i), United Auto was barred from contesting the claim. This appeal followed.

### STANDARD OF REVIEW

This court reviews a trial court's order entering summary judgment de novo. *Skelton v. Real Est. Sol. Home Sellers, LLC*, 202 So. 3d 960, 961 (Fla. 5th DCA 2016).

### ANALYSIS

On appeal, United Auto argues that the trial court erred in denying its motion for summary judgment based on its finding that United Auto was barred from contesting the claim because it failed to deny or pay the claim

within the timeframes set by section 627.736(4), Florida Statutes (2020). We agree.

In relevant part, section 627.736(4), which bears the heading of “payment of benefits,” provides:

(b) **Personal injury protection insurance benefits** paid pursuant to this section **are overdue if not paid within 30 days** after the insurer is furnished written notice of the fact of a covered loss and of the amount of same.

. . . .

(i) If an insurer has a reasonable belief that a fraudulent insurance act . . . has been committed, the insurer shall notify the claimant, in writing, within 30 days after submission of the claim that the claim is being investigated for suspected fraud. Beginning at the end of the initial 30-day period, **the insurer has an additional 60 days to conduct its fraud investigation.** Notwithstanding subsection (10), no later than 90 days after the submission of the claim, **the insurer must deny the claim or pay the claim with simple interest as provided in paragraph (d).**

§ 627.736(4)(b), (i), Fla. Stat. (2020) (emphasis added).

The Florida Supreme Court has explained that section 627.736(4) describes when PIP benefits are due and the method by which notice must be given. *Allstate Ins. Co. v. Kaklamanos*, 843 So. 2d 885, 891 (Fla. 2003). The Florida Supreme Court has also observed “the insurer is not barred from contesting the claim just because a payment becomes overdue.” *Id.* at 892;

*e.g., United Auto. Ins. Co. v. Rodriguez*, 808 So. 2d 82, 86 (Fla. 2001); *AIU Ins. Co. v. Daidone*, 760 So. 2d 1110, 1111 (Fla. 4th DCA 2000).

Advanced Diagnostic recognizes the Florida Supreme Court's holdings in this regard but argues that the PIP statute has endured multiple amendments since those cases were decided. Advanced Diagnostic highlights the 2013 amendment which added the language of subsection (4)(i) quoted above. Advanced Diagnostic does not offer an explanation though of how the above-referenced subsection supports its claim, nor can we conceive of one.

Examining the plain language, subsection (4)(i) extends the thirty-day period referenced in subsection (4)(b), providing an additional sixty days once the insurer has notified a claimant that the claim is being investigated for fraud. Paragraph (i) also explains that upon expiration of that extended period, an insurer shall deny or "pay the claim with simple interest as provided in paragraph (d)." Paragraph (d) describes the method of payments for "overdue payments," referring back to the language of paragraph (b). Read together then, subsection (4)(i) permits extension of the time before which payments become "overdue," but does not alter the consequences for an overdue payment.

Because section 627.736(4)(i) does not alter the penalties for overdue payments, the Florida Supreme Court's previous pronouncement still applies: United Auto is not barred from contesting the claim just because the payment became overdue.<sup>1</sup> In so holding, we do not address the propriety of *Century-National Insurance Co.*, 28 Fla. L. Weekly Supp. 30. That case, which examined whether an insurer waived its right of rescission, did not require the result the trial court reached here.

Based on the foregoing, we therefore reverse the denial of United Auto's motion for summary judgment and remand with instructions for the trial court to enter a final summary judgment on the material misrepresentation defense in United Auto's favor.

REVERSED and REMANDED with instructions.

COHEN and EDWARDS, JJ., concur.

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<sup>1</sup> We address only the narrow issue presented by United Auto in its initial brief. United Auto did not properly present any other statutory basis for reversal.