

DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FOURTH DISTRICT

PROGRESSIVE SELECT INSURANCE COMPANY,
Appellant,

v.

DAVID A. BLUM, M.D., P.A., a/a/o VANESSA MORENO,
Appellee.

No. 4D16-4311

[March 14, 2018]

Appeal from the County Court for the Seventeenth Judicial Circuit,
Broward County; John D. Fry, Judge; L.T. Case No. 14-12198(70).

Douglas H. Stein of Association Law Group, P.L., Miami, for appellant.

Marlene S. Reiss, Miami, and Thomas J. Wenzel of Cindy A. Goldstein,
P.A., Coral Springs, for appellee.

KUNTZ, J.

We are presented with the following question, certified by the county
court to be of great public importance:

PURSUANT TO FLA. STAT. § 627.739, IS AN INSURER
REQUIRED TO APPLY THE DEDUCTIBLE TO 100% OF AN
INSURED'S EXPENSES AND LOSSES PRIOR TO APPLYING
ANY PERMISSIVE FEE SCHEDULE PAYMENT LIMITATION
FOUND IN § 627.736(5)(A)(1), FLA. STAT. (2013)?

We rephrase the certified question as follows:

PURSUANT TO SECTIONS 627.736 AND 627.739, FLORIDA
STATUTES (2013), IS AN INSURER REQUIRED TO APPLY A
POLICY DEDUCTIBLE TO THE TOTAL AMOUNT OF A
PROVIDER'S INVOICES TO AN INSURED PRIOR TO
APPLYING ANY FEE SCHEDULE FOUND IN § 627.736, FLA.
STAT.?

For the reasons explained in our opinion in *State Farm Mutual Automobile Insurance Co. v. Care Wellness Center, LLC a/a/o Bardon-Diaz*, No. 4D16-2254 (Fla. 4th DCA Mar. 14, 2018), also issued today, we answer the rephrased certified question in the negative, reverse the county court’s summary judgment, and remand for further proceedings consistent with our opinion in case number 4D16-2254. We also certify conflict with *Progressive Select Insurance Co. v. Florida Hospital Medical Center a/a/o Jonathan Parent*, 43 Fla. L. Weekly D318 (Fla. 5th DCA Feb. 9, 2018).

Reversed and remanded; conflict certified.

FORST, J., concurs.

GROSS, J., dissents with opinion.

GROSS, J., dissenting.

I dissent for the reasons set forth in my dissent to the Court’s opinion in *USAA Gen. Indem. Co. v. Gogan a/a/o Tara Ricks*, No. 4D16-3313 (Mar. 14, 2018).

* * *

Not final until disposition of timely filed motion for rehearing.