IN THE COUNTY COURT IN AND FOR MIAMI-DADE COUNTY, FLORIDA

CASE NO.: 14-016327 CC 25 (02)

CARIBBEAN REHABILITATION CENTER, INC. A/A/O REYNIER CORDOVES,

Plaintiff,

v.

STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY,

Defendant.
_________________________________/

FINAL JUDGMENT

THIS CAUSE having come before the Court on March 10, 2017, on Defendant's Motion for Entry of Final Judgment. At hearing, Plaintiff moved in ore tenus for dismissal without prejudice. The Court, having made a thorough review of the matters filed of record and being otherwise advised in the premises, hereby denies Plaintiff's ore tenus motion and enters Final Judgment for Defendant for the following reasons.

Florida law is clear that "[t]he failure to submit to an examination under oath is a material breach of the policy which will relieve the insurer of its liability to pay." *Stringer v. Fireman's Fund Ins. Co.*, 622 So. 2d 145, 146 (Fla. 3d DCA 1993), *rev. denied* 630 So. 2d 1101 (Fla. 1993) (citations omitted). "An insured's refusal to comply with a demand for an examination under oath is a willful and material breach of an insurance contract which precludes the insured from recovery under the policy." *Goldman v. State Farm Fire Gen. Ins. Co.*, 660 So. 2d 300, 304 (Fla. 4th DCA 1995) (citations omitted). "[P]olicy provisions requiring appellants to submit to examinations under oath are conditions precedent to suit [and] an insurer need not show prejudice when the insured breaches a condition

precedent to suit." *Id.* at 303-04 (citations omitted). "[I]f prejudice were to be considered, the burden would fall on the insured to prove no prejudice to the insurer by the insured's actions." *Id.* at 305 n.8.

In *Goldman*, the Fourth District "considered the possibility of remanding the case with directions that appellants submit to an examination under oath." *Goldman*, 660 So. 2d at 305. However, the court declined to exercise this option "since any belated compliance by appellants more than two (2) years subsequent to the loss and the commencement of suit would satisfy neither the spirit nor intent of the policy conditions at issue." *Id.*; *see also Fassi v. Am. Fire & Cas. Co.*, 700 So. 2d 51, 53 (Fla. 5th DCA 1997) (after multiple opportunities to provide sworn statement as required by the insurance policy, insureds' belated offer to provide a statement was "too little, too late"); *Gonzalez v. State Farm Fla. Ins. Co.*, 65 So. 3d 608, 609 (Fla. 3d DCA 2011) ("[W]e find no error or abuse of discretion in the trial court's denial of insured's request to 'abate' the action, which was first made almost five years after the loss and only in the face of an imminent ruling against her at the hearing on the carrier's motion for summary judgment."); *Edwards v. State Farm Fla. Ins. Co.*, 64 So. 3d 730, 733 (Fla. 3d DCA 2011) ("In light of these undisputed facts, we find Edwards' arguments regarding alleged substantial or belated compliance [with EUO requirement] require unjustified inferences from the record, and are thus without merit sufficient to overcome the trial court's summary judgment.").

In this case, Plaintiff's request to dismiss or abate is untimely because it comes more than two years after this lawsuit was filed and long after the insured's failure to submit to the EUOs. Permitting an EUO at this juncture would defeat the purpose of the EUO provision because State Farm "needed evidence at time of investigation when facts were more easily recalled and before crucial evidence was destroyed or became otherwise unavailable[.]" *Goldman*, 660 So. 2d at 306.

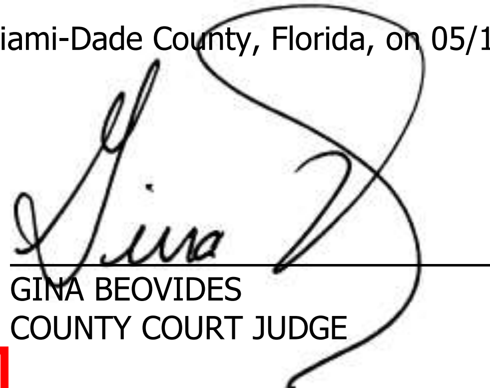
Additionally, Plaintiff is not the insured and has no ability to cure the insured's failure to comply with the EUO provision. Because Plaintiff stands in the shoes of the insured and the insured breached the contract, Plaintiff is not entitled to benefits under the insured's policy and State Farm is

entitled to final judgment. *See Comprehensive Health Ctr., Inc. v. United Auto. Ins. Co.*, 56 So. 3d 41, 43 (Fla. 3d DCA 2010) (insured's "lack of a valid basis for non-attendance entitled [insurer] to the entry of summary judgment" against provider).

Accordingly, it is hereby ORDERED and ADJUDGED that Defendant's Motion for Final Judgment is hereby GRANTED and Plaintiff's ore tenus Motion to Dismiss is Denied.

IT IS ADJUDGED that Plaintiff, CARIBBEAN REHABILITATION CENTER, INC., located at 953 SW 122nd Avenue, Miami, Florida 33184, whose federal tax identification number is 35-2399731 take noting by this action and that Defendant, STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY, One State Farm Plaza, Bloomington, IL 61710shall go hence without day.

DONE AND ORDERED in Chambers at Miami-Dade County, Florida, on 05/12/17.



GINA BEOVIDES
COUNTY COURT JUDGE

FINAL ORDERS AS TO ALL PARTIES
SRS DISPOSITION NUMBER 3
THE COURT DISMISSES THIS CASE AGAINST ANY PARTY NOT LISTED IN THIS FINAL ORDER OR PREVIOUS ORDER(S). THIS CASE IS CLOSED AS TO ALL PARTIES.
Judge's Initials GB

The parties served with this Order are indicated in the accompanying 11th Circuit email confirmation which includes all emails provided by the submitter. The movant shall IMMEDIATELY serve a true and correct copy of this Order, by mail, facsimile, email or hand-delivery, to all parties/counsel of record for whom service is not indicated by the accompanying 11th Circuit confirmation, and file proof of service with the Clerk of Court.

Signed original order sent electronically to the Clerk of Courts for filing in the Court file.

Copies furnished to:

Susette Gruebele, Esq., **Thomas L. Hunker, Esq.,** Cole, Scott & Kissane, P.A., Lakeside Office Center, Suite 500, 600 North Pine Island Road, Plantation, Florida 33324, susette.gruebele@csklegal.com; thomas.hunker@csklegal.com

Todd A Landau, Esq., Todd Landau, P.A., 1250 East Hallandale Beach Blvd., Suite 703, Hallandale Beach, FL 33009, pleadings@toddlandaulaw.com