

**ATKINSON &
BROWNELL P.A.**
ATTORNEYS AT LAW

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April 13, 2011

Dear Ladies and Gentleman:

As automobile liability insurers and re-insurers we wanted to take this time to bring to your attention a recent county court ruling regarding Personal Injury Protection (PIP) benefits owed by an automobile liability insurer pursuant to Florida Statutes sections 627.736 and 627.739(2) as well as a class action PIP lawsuit filed on March 30, 2011 against Progressive Insurance Company.

In the county court case entitled *Flagler Hospital, Inc. v. Peak Prop. & Cas. Ins. Co.*, Case no.: SP10-1878, in the County Court, Seventh Judicial Circuit, in and for St. Johns County, Florida, Flagler Hospital, Inc. (Flagler Hospital) was seeking to recover assigned PIP benefits from Peak Prop. & Case. Ins. Co. (Peak Property) for medical services it rendered to Mr. Sapp who Peak Property insured at the time of his motor vehicle accident. The insured purchased a PIP policy with a \$1,000.00 deductible. At issue before the court was the amount owed by Peak Property to Flagler Hospital pursuant to Florida Statutes sections 627.736 and 627.739. Flagler Hospital's position was that the insured's \$1,000.00 deductible should be deducted from the entire amount due before the percentage reductions were applied pursuant to section 627.736. Peak Property's position was that the \$1,000.00 deductible should be applied after the percentage deductions were applied. Flagler Hospital moved for partial summary judgment alleging that as a matter of law its calculations were the legally proper formula to determine the amounts due for medical services under the current PIP statutes. The court agreed finding that Flagler correctly applied the insured's deductible to 100 percent of the amount due and owing for medical services it provided and entered an order granting partial summary judgment as to the issue of the application of the insured's deductible pursuant to section 627.739(2).

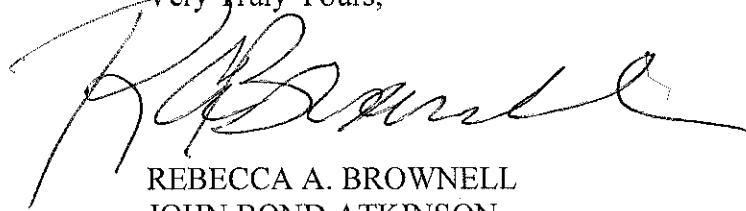
On March 30, 2011 a class action PIP suit was filed here in Miami-Dade County, case entitled *Progressive Health Services, Inc. v. Progressive American Ins. Co.*, Case No. 11-09766CA30, in the Circuit Court of the Eleventh Judicial Circuit in and for Miami-Dade County, Florida. The Plaintiffs' asserted three counts: Count I- Declaration of Rights; Count II- Injunctive Relief; and Count III-Breach of Contract. The Plaintiffs' have alleged the same theory of relief as asserted in the county court action. In this case, the Plaintiffs' are alleging that the legislative intent in amending Fla. Stat. section 627.739 was to prevent insurance companies from using PIP deductible to reduce the total amount of PIP benefits under a policy. It is being argued that because the language of the amended statute states that PIP policy deductibles must be applied to 100% of the

expenses and losses, that Progressive has routinely and improperly and unlawfully applied PIP policy deductibles to reduce its payment obligations in violation of section 627.739(2).

It appears that this type of sample complaint is being used against understandably nervous insurers. You can see where the Plaintiffs' attorneys are headed given the ruling in the Peak Property case. If you would like to obtain a copy of the Peak Property case or the recently filed class action PIP lawsuit, please let us know and we would be happy to send you a copy.

In the interim, should you have any questions, please feel free to give either myself or John Atkinson a call to discuss further.

Very Truly Yours,

A handwritten signature in black ink, appearing to read 'R. Brownell', written over a faint, larger signature that appears to be 'John Bond Atkinson'.

REBECCA A. BROWNELL
JOHN BOND ATKINSON

RAB/JBA: ei