Florida Appeals Court Nods Enforceability of Forum Selection Clauses in PIP Cases

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Nearly every insurance policy has a forum selection clause and nearly every opposite party wants to avoid them at all costs in hopes of finding a more favorable venue. A new opinion from Florida's 3rd District Court of Appeal, *Open MRI Guys of Palm Beach, LLC v. Progressive American Insurance*, handed down in September, could have wide-ranging impacts on a variety of insurance policies and contracts. The opinion covered the usual arguments against enforceability. Disputes regarding adhesion contracts, mutuality requirements, statutory framework, and declaratory actions were all on the agenda and found to be unpersuasive against the enforceability of a forum selection clause.

In *Open MRI Guys*, the plaintiff brought a declaratory action in Miami-Dade County regarding whether Progressive was required to use a certain Medicare reimbursement formula when issuing no-fault benefits. However, Progressive moved to change venue based on its forum selection clause that "any legal action" must be brought in the "county and state where the person seeking coverage from the policy lived at the time of the accident." The trial court eventually agreed with Progressive, granting the transfer and the plaintiff appealed.

On appeal, Open MRI made numerous arguments commonly used when challenging venue transfer, which often go unappealed due to the time and expense of doing so.

First, Open MRI argued that by virtue of filing a declaratory action and because it was not litigating coverage, the forum selection clause was inapplicable. However, the court found no such rule existed for simply filing a declaratory action when the selection clause's language applied to "any legal action." Further, Open MRI attempted to argue a lower court case with different policy language regarding coverage disputes.

The 3rd District found this unpersuasive and distinguishable because that clause limited the forum selection for actions "to determine coverage" where Progressive's policy did not have the same limitation narrowing forum to coverage determination disputes.

Next, Open MRI argued that Progressive's policy was an adhesion contract and, thus, the selection clause was unenforceable. An adhesion contract is one in which one party has higher bargaining power than another, which insurance policies often fall under. However, the 3rd District noted that the focus on "unequal bargaining power" does not invalidate policy terms on its own, but the terms must be "unreasonable and unjust." The court clarified in a footnote citing *M/S Bremen v. Zapata Off-Shore Co.*, a 1972

court decision, that this is an extremely heavy burden:

"[It is] incumbent on the party seeking to escape his contract to show that trial in the contractual forum will be so gravely difficult and inconvenient that he will for all practical purposes be deprived of his day in court. Absent that, there is no basis for concluding that it would be unfair, unjust, or unreasonable to hold that party to his bargain."

For all intents and purposes, the burden of defeating a forum selection for reasonableness would require some type of extraordinary and rare circumstance not common to the average claimant. Further, in today's world of remote hearings, the bar may be raised even higher.

Open MRI next argued that Florida's No-Fault statute did not specifically permit a forum selection clause and that it would be contrary to the purpose of swift no-fault reimbursement, so, by all logic, none could be permitted. The 3rd District court disagreed on both matters, finding no basis in law that a statutory framework must specifically approve a forum selection clause and that the clause itself has no bearing on the purpose of expedient medical billing reimbursement, which occurs before litigation. Such rulings are excellent guides for challenges to selection clauses in other types of statutorily created litigation.

Finally, Open MRI claimed that because only Progressive could invoke the selection clause, i.e., a "non-mutuality clause," that it could not be enforceable. However, the 3rd District, noting a prior 3DCA appellate opinion, returned to the standard that the provision isn't unenforceable simply because it's non-mutual, but that the clause cannot be unreasonable and unjust, paralleling its finding regarding adhesion contracts.

Florida's 3rd District opinion on forum selection clauses is a potent reminder of their utility. Oftentimes, when insurers are overburdened with litigation, waiving venue is an unintended result due to resistance of opposing parties claiming foul on the insurance policy language. However, due to the 3rd District's *Open MRI Guys* opinion, parties can now have more certainty and efficiency when it comes to finding the proper venue.

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