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# The *Regional MRI* Case: A Study in the Use of Independent Contractors in Florida's PIP Insurance Litigation

By Rachel Teresa Wright\*

## I. Introduction

Average Joe is involved in an automobile insurance accident. The next day, Joe feels a sharp pain in his neck. He thinks about going to the doctor, but then quickly disregards the idea because he is uninsured. The pain gets worse, so finally he decides to bring a civil suit against the other driver, and hopes that the other driver is ordered to pay for his doctor visits. Unfortunately, there is not enough proof to determine fault, so Joe's case is dismissed. Joe ultimately goes to the doctor and pays \$7,800<sup>1</sup> for his medical services. This unexpected expense is a huge amount of money for Joe. He ends up declaring bankruptcy, unable to meet his other bills, because of the tremendous burden that his injuries and resulting medical expenses from the accident have caused.

Personal injury protection ("PIP") insurance systems, also called no-fault acts, were designed in response to situations such as the one described above.<sup>2</sup> No-fault automobile insurance, as in contrast with the traditional tort liability system, is the minority

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<sup>1</sup> See No-Fault Insurance in Other States, prepared by the North Dakota Legis. Council staff for the Transp. Comm., Jan. 2004, at <http://www.statend.us/lr/assembly/58-2003/docs/pdf/59149.pdf> (Feb. 24, 2005) (finding that the average PIP claim in Colorado was about \$7,800) [hereinafter No-Fault Insurance in Other States].

<sup>2</sup> Introduction to No-Fault Benefits, at <http://www.usalaw.com/pipserv/intro.html> (last visited May 10, 2005) (stating that the purpose of the no-fault system in Florida was to assure speedy payment of medical bills and compensation for lost income without regard to fault) [hereinafter Introduction to No-Fault Benefits].

choice of coverage, currently elected in place in twelve states.<sup>3</sup> In Florida, a frontrunner in PIP insurance law and litigation, PIP insurance benefits should be paid to providers who “render” reasonable and necessary medical services.<sup>4</sup> At issue in this article is the meaning of the word “rendered,” since it is a requirement of Florida’s no-fault law that the entity “render” medical services in order to receive payment of PIP benefits.<sup>5</sup> In particular, this article explores if an entity can “render” medical services and be properly bill for such services, in situations where some of the services are actually performed by an independent contractor for the facility. In *Regional MRI of Orlando, Inc. v. Nationwide Mutual Fire Insurance Company*,<sup>6</sup> as a matter of first impression at the Florida appellate level,<sup>7</sup> the Fifth District Court of Appeal ruled that an entity could “render” medical services through the use of an independent contractor.<sup>8</sup> The court held that Regional MRI, the billing entity, had “rendered” medical services, pursuant to Section 627.736, and was allowed to submit a bill with one “amount due” for services actually performed by Regional MRI as well as for services provided *on their behalf* by an independent contractor.<sup>9</sup> The circuit court had held that Regional MRI could only bill for the MRI scan that it actually performed and not for the independent contractor’s interpretation of it.<sup>10</sup> The court stated that “render” meant “to perform” the medical services and did not contemplate hiring an independent contractor to perform the medical services on another’s behalf.<sup>11</sup> The Fifth District

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<sup>3</sup> See No Fault Insurance in Other States, *supra* note 1 (noting that the following states some version of no-fault insurance: FL, HA, KS, KY, MA, MI, MN, NJ, NY, ND, PA and UT); No-Fault Auto Insurance, Insurance Information Institute, <http://www.iii.org/media/hottopics/insurance/nofault/> (updated March 2005).

<sup>4</sup> FLA. STAT. ch. 627.736(5)(a) (2003).

<sup>5</sup> FLA. STAT. ch. 627.736(5)(a).

<sup>6</sup> *Reg'l MRI of Orlando, Inc. v. Nationwide Mut. Fire Ins. Co.*, 884 So.2d 1102 (Fla. 5th Dist. Ct. App. 2004) [hereinafter *Reg'l MRI*].

<sup>7</sup> *Id.* at 1106-07.

<sup>8</sup> *Id.* at 1111-12.

<sup>9</sup> *Id.* at 1110.

<sup>10</sup> *Regional MRI of Orlando, Inc. v. Nationwide Mutual Fire Insurance Co.*, 10 Fla. L. Weekly Supp. 1020c, at \*2-3 (Fla. Orange County Ct. 2003) [hereinafter *Regional MRI II*].

<sup>11</sup> *Id.* at \*2.

reversed,<sup>12</sup> and, in arriving at its decision, cited Florida cases which both supported and contradicted its ruling.<sup>13</sup> It also examined the legislative history behind the statute to be sure that its ruling was consistent with the purpose of the Florida Motor Vehicle No-Fault Act (the “Act”) and its goal of protecting consumers.<sup>14</sup>

This article will provide an overview of consumer’s rights and responsibilities in a PIP insurance system such as that established in Florida. It will then examine the decision in *Regional MRI* and analyze prior decisions on the issue of whether an entity can “render” medical services, as required by the statute for payment,<sup>15</sup> when it has subcontracted out a portion of these services. Inherent in this issue is how the verb “render” should be defined—whether its definition should be limited to actual performance or whether it should be construed to mean “to provide or furnish” as well.<sup>16</sup> The article then

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<sup>12</sup> *Reg'l MRI*, 884 So.2d at 1103.

<sup>13</sup> For cases that support Nationwide’s position (which the court ultimately rejects) that an entity should not be allowed to bill for services provided by an independent contractor, see *Motion X-Ray, Inc. d/b/a Nu-Best Diagnostics Labs, Inc. v. State Farm Auto. Ins. Co.*, 10 Fla. L. Weekly Supp. 346a (Fla. Orange County Ct. 2002); *Radiology B & Servs., Inc. v. Progressive Express Ins. Co.*, 11 Fla. L. Weekly Supp. 251c (Fla. Broward County Ct. 2003) [hereinafter *Radiology B I*]. For cases that support Regional MRI’s contention that an entity can “render” medical services through the use of an independent contractor, see *Radiology B & Servs., Inc. v. Progressive Expressive Ins. Co.*, 10 Fla. L. Weekly Supp. 935a (Fla. Broward County Ct. 2003) [hereinafter *Radiology B II*]; *Prof'l Consulting Servs., Inc. v. Hartford Life & Accident Ins. Co.*, 849 So.2d 446 (Fla. 2d Dist. Ct. App. 2003); *Oakland Park Open MRI, Inc. v. Progressive Express Ins. Co.*, 11 Fla. L. Weekly Supp. 259a (Fla. Broward County Ct. 2003); *Axcess MRI v. Nationwide Mut. Fire Ins. Co.*, 11 Fla. L. Weekly Supp. 727a (Fla. Duval County Ct. 2003) [hereinafter *Axcess MRI I*]; *Axcess MRI v. Nationwide Mutual Fire Ins. Co.*, 11 Fla. L. Weekly Supp. 439a (Fla. Duval County Ct. 2004) [hereinafter *Axcess MRI II*]; *Axcess MRI v. Nationwide Mut. Fire Ins. Co.*, 11 Fla. L. Weekly Supp. 563c (Fla. Duval County Ct. 2004) [hereinafter *Axcess MRI III*].

<sup>14</sup> See Second Interim Report of the Fifteenth Statewide Grand Jury entitled “Report on Insurance Fraud Related to Personal Injury Protection,” at <http://www.myfloridalegal.com/pages.nsf/0/9ab243305303a0e085256cca005b8e2e?OpenDocument> (last visited May 10, 2005) [hereinafter Report on Insurance Fraud] (stating that the PIP benefits are intended “to provide not only protection and peace of mind for the insured, it also relieves taxpayers from shouldering the burden of caring for injured drivers and passengers, who do not otherwise have health care insurance.”).

<sup>15</sup> FLA. STAT. ch. 627.736(5)(a).

<sup>16</sup> See e.g. *Axcess MRI II*, 11 Fla. Law Weekly Supp. 439a, at \*2 (citing Webster’s dictionary for a broad definition of “render” that includes providing

discusses how the decision in *Regional MRI* fits in with the body of Florida case law on PIP insurance billing. Finally, this article will conclude that the decision in *Regional MRI* is a victory for consumers, making it easier for them to receive their PIP benefits.

## II. Overview of Florida's No-Fault Motor Vehicle Act

An understanding of the framework of Florida's PIP legislation is necessary to truly appreciate the consequence of the decision in *Regional MRI*. Florida passed its first law pertaining to PIP, also known as no-fault insurance, in 1971.<sup>17</sup> This law replaced the old tort system of recovery relating to automobile accidents.<sup>18</sup> In the former system, the injured party had the burden to prove that the other party was at fault in order to receive money from the insurance company for medical benefits.<sup>19</sup> The intent behind the Florida Motor Vehicle No-Fault Law was "to provide for medical, surgical, funeral, and disability insurance benefits without regard to fault."<sup>20</sup> Florida drivers are required to carry at least \$10,000 of PIP insurance benefits, with a maximum allowable deductible of \$2,000.<sup>21</sup> PIP insurance protects the owner of the vehicle, members of the same household, anyone driving the vehicle with the owner's permission, and passengers and pedestrians who do not have their own insurance.<sup>22</sup> The PIP benefits are triggered when any such person

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services in addition to actually performing the services).

<sup>17</sup> Mark. K. Delegal & Allison P. Pittman, *Florida No-Fault Insurance Reform: A Step in the Right Direction*, 29 FLA. ST. U. L. REV. 1031, 1031 (2002).

<sup>18</sup> Delegal & Pittman, *supra* note 17, at 1031.

<sup>19</sup> *Id.* at 1032.

<sup>20</sup> *United Auto Ins. Co. v. Rodriguez*, 808 So.2d 82, 85 (Fla. 2001); In a case where the plaintiff was hit and injured by an automobile while standing on the sidewalk, the Supreme Court of Florida explained: "Without a doubt, the purpose of the no-fault statutory scheme is "to provide swift and virtually automatic payment so that the insured may get on with his life without undue financial interruption." *Ivey v. Allstate Ins. Co.*, 774 So.2d 679, 683-84 (Fla. 2000) (*noted in Gov't Employees Ins. Co. v. Gonzalez*, 512 So.2d 269, 271 (Fla. 3d Dist. Ct. App. 1987)).

<sup>21</sup> FLA. STAT. 627.736(1); Medical Benefits Under Florida's No-Fault (PIP) Law [hereinafter Medical Benefits], at <http://www.usalaw.com/pipserv/medical.html> (last visited May 10, 2005).

<sup>22</sup> Delegal & Pittman, *supra* note 17, at 1033. The insurance company shall provide PIP benefits to "the named insured, relatives residing in the same household, persons operating the insured motor vehicle, passengers in such motor

suffers a loss “as a result of bodily injury, sickness, disease or death arising out of the ownership, maintenance or use of a motor vehicle . . . .”<sup>23</sup> The insurance company is required to pay for certain medical and other expenses “sustained as a result of bodily injury, sickness, disease or death arising out of the ownership, maintenance, or use of a motor vehicle . . . .”<sup>24</sup> PIP benefits cover eighty percent of certain reasonable and necessary medical expenses, sixty percent of lost earnings from a disability caused by the injury, and a death benefit of \$5,000 per individual.<sup>25</sup>

The goal of the PIP legislation was to provide for quicker payment of consumers’ medical bills even where the injured person was clearly at fault.<sup>26</sup> Although passage of the PIP Act meant that individuals would lose their opportunities for tort recovery, they would receive quicker payment of their medical expenses by their own insurance companies rather than having to endure a lengthy court battle to get the medical expenses paid.<sup>27</sup> Unfortunately, a negative consequence of this new system was that PIP insurance fraud soon developed.<sup>28</sup> The legislature found that some doctors and other medical providers viewed the PIP benefits as an untapped “slush fund” of extra income,<sup>29</sup> and as a result, billed for services that were not medically necessary or charged unreasonable rates for services.<sup>30</sup> The legislature addressed this problem and provided recommendations for changes to the Act in the Second Interim Report of the Fifteenth Statewide Grand Jury, which defined PIP fraud as follows:

illegal solicitation of accident victims for the purpose of

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vehicle, and other persons struck by such motor vehicle and suffering bodily injury while not an occupant of a self-propelled motor vehicle . . . .” FLA. STAT. ch. 627.736(1).

<sup>23</sup> FLA. STAT. ch. 627.736(1).

<sup>24</sup> *Id.*

<sup>25</sup> *Id.*

<sup>26</sup> Introduction to No-Fault Benefits, *supra* note 2.

<sup>27</sup> Delegal & Pittman, *supra* note 17, at 1032; *see also* Ivey v. Allstate Ins. Co., 774 So.2d 679, 683-84 (Fla. 2000) (stating that the purpose of the Act was to provide quick payment of medical expenses).

<sup>28</sup> Report on Insurance Fraud, *supra* note 14.

<sup>29</sup> *Id.*; Delegal & Pittman, *supra* note 17, at 1034.

<sup>30</sup> Delegal & Pittman, *supra* note 17, at 1035.

filing for PIP benefits and motor vehicle tort claims;

Brokering<sup>31</sup> patients between doctors, lawyers and diagnostic facilities, as well as the attendant fraud, which can include the filing of false claims;

Billing insurance companies for treatment not rendered;

Using phony diagnostic tests or misusing legitimate tests;

Inflating charges for diagnostic tests or procedures through brokers;

Filing fraudulent motor vehicle tort lawsuits.<sup>32</sup>

The Florida Legislature indicated that this report was incorporated in its entirety into their findings for the 2001 amendments to the Florida Motor Vehicle No-Fault Law (“FMVNL” or “the Act”), of which Section 627.736(5), the statute at issue in *Regional MRI*, is a part.<sup>33</sup> It found that the purpose of FMVNL was to increase access to necessary medical care without regard to fault or the expense of litigation, but that the increase in PIP insurance fraud necessitated an expansion of penalties for such unlawful conduct.<sup>34</sup> With regard to diagnostic tests such as videofluoroscopy,<sup>35</sup> the

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<sup>31</sup> A “broker” is defined as “any person not possessing a license under Chapter 395 [Hospital Licensing and Regulation], Chapter 400 [Nursing Homes and Related Health Care Facilities], Chapter 458 [Medical Practice], Chapter 459 [Osteopathic Medicine], Chapter 460 [Chiropractic Medicine], Chapter 461 [Podiatric Medicine], or Chapter 641 [Health Care Service Programs] who charges or receives compensation for any use of medical equipment and is not the 100-percent owner or the 100-percent lessee of such equipment.” FLA. STAT. ch. 627.732(1)(2003), *noted in Reg’l MRI*, 884 So.2d at 1106.

<sup>32</sup> Report on Insurance Fraud, *supra* note 14.

<sup>33</sup> *Reg’l MRI*, 884 So.2d at 1111.

<sup>34</sup> *See id.* at 1111 (citing Ch. 2001-271, § 1, at 1749-50 Fla. Sess. Law Serv.).

<sup>35</sup> “[Videofluoroscopy is] a motion picture X-ray that many doctors believe is dangerous because patients are subjected to gamma rays for up to fifteen minutes in one session. The test appeals to unethical chiropractors because the machine can be leased for \$1,500 per month, while the tests are billed out at over \$650 for each session.” Delegal & Pittman, *supra* note 17, at 1036; Report on Insurance Fraud, *supra* note 14.

legislature concluded that all the tests were “extremely expensive, highly profitable, and generally employed to drain the \$10,000 coverage as quickly as possible.”<sup>36</sup>

### A. The Meaning of “Arising Out Of” in Florida

In order to give effect to the legislative purpose to have the insured’s medical benefits paid out quickly, the Florida Supreme Court has construed some statutory terms in the Act broadly. The Act requires that the injuries and medical expenses must *arise out of* “the ownership, maintenance or use of a motor vehicle . . . .”<sup>37</sup> The court has liberally interpreted the phrase “arising out of,” to not only encompass proximate cause; additionally, this term is satisfied if there is “some nexus between the motor vehicle and the injury.”<sup>38</sup> In determining if a nexus exists, the Florida Supreme Court has stated the test is if the injury is reasonably foreseeable by the contracting parties.<sup>39</sup> Many different kinds of incidents have satisfied this nexus requirement.<sup>40</sup> The court found sufficient nexus where the insured was injured by an officer who arrested him for an alleged traffic violation.<sup>41</sup> Additionally, the court has found a nexus where the insured’s fatal injury was a result of being shot in the face while sitting in her car.<sup>42</sup> In *Regional MRI*, where the plaintiff was injured in an automobile accident,<sup>43</sup> Nationwide, the insurance carrier, did not argue that there was an insufficient nexus but instead justified their denial of benefits on the grounds that the independent contractor was not an employee of Regional MRI and could not “render” services for it.<sup>44</sup> Perhaps Nationwide did not argue the nexus requirement due to the broad interpretation of “arising out of” in prior cases.

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<sup>36</sup> Report on Insurance Fraud, *supra* note 14.

<sup>37</sup> FLA. STAT. ch. 627.736(1).

<sup>38</sup> Gov’t Employees Ins. Co. v. Novak, 453 So.2d 1116, 1119 (Fla. 1984).

<sup>39</sup> Blish v. Atlanta Cas. Co., 736 So.2d 1151, 1155 (Fla. 1999).

<sup>40</sup> See, e.g., Hernandez v. Protective Cas. Ins. Co., 473 So.2d 1241 (Fla. 1985); Gov’t Employees Ins. Co. v. Novak, 453 So.2d 1116 (Fla. 1984).

<sup>41</sup> Hernandez v. Protective Cas. Ins. Co., 473 So.2d 1241, 1242 (Fla. 1985).

<sup>42</sup> Gov’t Employees Ins. Co., 453 So.2d at 1119. The PIP benefits were granted to her estate. *Id.* at 1117-18.

<sup>43</sup> *Reg’l MRI*, 884 So.2d at 1103.

<sup>44</sup> *Id.* at 1104.



## B. Time Limits on Payment of PIP Insurance Benefits

The insurance company has thirty days from the date it receives notice of the loss and the amount due to either pay the claim or to discover the facts that justify its denial of PIP benefits.<sup>45</sup> If the claim remains unpaid after thirty days, or if the insured receives a notice that the insurance company does not intend to pay, the insured has the right to bring suit against the insurance company to pay the PIP benefits.<sup>46</sup> The Florida Supreme Court held that the insured may bring suit even if he has not yet paid the medical bills himself, and even if the medical provider has not yet sued the insured to obtain payment; the insured can suffer non-economic loss even before being sued.<sup>47</sup> It reasoned that to find otherwise would be inconsistent with the expressed purpose of the Act to provide consumers with PIP insurance “swift, virtually automatic payment.”<sup>48</sup>

The Fifth District Court of Appeal similarly found that, assuming the insured’s treatment was necessary, reasonable, and related to the accident, the notice of the insurance company’s refusal to pay PIP benefits was an “anticipatory breach of its agreement to provide these benefits.”<sup>49</sup> The court held that the insured was entitled to bring suit at the time the insurance company notified him/ her of its refusal to pay and not required to wait thirty days, as required by statute<sup>50</sup>, to verify that the insurance company would not make payment.<sup>51</sup> Moreover, the Fifth District Court of Appeal has ruled that an insurer cannot the thirty-day time limit by simply raising a coverage issue.<sup>52</sup> The insurer has the right to continue investigation, but it must pay any interest and penalties if it is ultimately ordered to pay the claim.<sup>53</sup> This is consistent with the idea that the insured has a

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<sup>45</sup> FLA. STAT. ch. 627.736(4)(b)(2001), *construed in January v. State Farm Mut. Ins. Co.*, 838 So.2d 604, 607 (Fla. 5 Dist. App. 2003).

<sup>46</sup> *Peachtree Casualty Ins. Co. v. Walden*, 759 So.2d 7, 8 (Fla. 5 Dist. App. 2000).

<sup>47</sup> *Allstate Ins. Co. v. Kaklamanos*, 843 So.2d 885, 892-93 (Fla. 2003).

<sup>48</sup> *Kaklamanos*, 843 So.2d at 896-97.

<sup>49</sup> *Id.*

<sup>50</sup> FLA. STAT. ch. 627.736(4)(b)(2003).

<sup>51</sup> *Peachtree*, 759 So.2d at 8.

<sup>52</sup> *January*, 838 So.2d at 607.

<sup>53</sup> *Id.* at 607; *but see Gurney v. State Farm Mut. Auto. Ins. Co.*, 795 So.2d 1118, 1121 (Fla. 2001) (explaining that where jury found no PIP benefits were due,

right under the Act to have his medical bills paid promptly.<sup>54</sup>

### C. The Long Arm of Discovery

In the Second District, the insurance company is afforded great latitude in discovery to determine the reasonableness of a claim.<sup>55</sup> In *MRI Servs., Inc. v. State Farm Mutual Auto. Ins. Co.*, State Farm requested that MRI Services provide copies of the agreements between it and each of the entities that billed State Farm for the MRI scans.<sup>56</sup> State Farm also requested copies of bills and other documentation outlining the costs of the MRI services.<sup>57</sup>

The issue was whether MRI Services could be compelled to produce such items given that it was not the insured's assignee, nor had it billed State Farm for services.<sup>58</sup> The Court found that MRI Services could be ordered to produce the documents, reasoning that otherwise State Farm would not be able "to determine whether the charges and services are reasonable and necessary."<sup>59</sup> This decision, while not binding upon the court in *Regional MRI*, strikes a balance between the rights of the insured consumer to receive speedy payment and the interest of the insurance company in preventing fraud and only covering reasonable expenses.<sup>60</sup>

Similarly, the Fourth District Court of Appeal has held that the insurance company has the right to discover information about the cost of the medical services for which payment is sought.<sup>61</sup> "Costs" include the *actual* cost to the provider to provide the treatment, not

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insurer was not required to pay any interest or penalties).

<sup>54</sup> See *Lasky v. State Farm Ins. Co.*, 296 So.2d 9, 15 (Fla. 1974) (stating that insured trades limited tort recovery for speedy payment of medical bills and lost income, even where the insured himself is at fault).

<sup>55</sup> *MRI Servs., Inc. v. State Farm Mut. Auto. Ins. Co.*, 807 So.2d 783, 785 (Fla. 2d Dist. Ct. App. 2002).

<sup>56</sup> *MRI Servs., Inc.*, 807 So.2d at 784 .

<sup>57</sup> *Id.*

<sup>58</sup> *Id.*

<sup>59</sup> *Id.* at 785.

<sup>60</sup> PIP insurance fraud results in a "loss of coverage and marginal medical treatment for those who are injured as well as higher insurance rates for all drivers." Report on Insurance Fraud, *supra* note 14.

<sup>61</sup> *Kaminester v. State Farm Mut. Auto. Ins. Co.*, 775 So.2d 981, 985 (Fla. 4 Dist. App. 2001).

just what the provider is charging.<sup>62</sup> This right applies even where the insurance company has paid the claim, because the insurance company is entitled to investigate and receive back any overpayment in excess of reasonable costs.<sup>63</sup> The breadth of discovery allowed to determine what is reasonable provides protection to both the insurance company and the insured; it lessens the risk that insurance companies will overpay unreasonable PIP claims, which would, in turn, drive up the cost of insurance premiums for all consumers.<sup>64</sup>

#### **D. The Insured's Award Subject to Setoff Only by Payable Benefits**

There may be situations where the injuries and medical bills exceed the amount of PIP insurance coverage, and in such instances, the injured party may bring a tort action against the other party for additional compensation for economic loss.<sup>65</sup> The Florida Supreme Court has found that the insured has a right to recover a judgment for "payable" medical expenses—those that have been incurred but have not been paid by the PIP carrier.<sup>66</sup> Moreover, the amount of any award to the insured should be offset only by the amounts "payable" and should not be reduced for anticipated future expenses.<sup>67</sup> The court reasoned that that to deduct future expenses would leave the insured with no guarantee that the insurer would pay out the setoff, yet the award would be reduced by the remaining PIP benefits.<sup>68</sup> Thus, the court protected the consumer's right to keep his award and still bill the medical provider for any future medical expenses, up to the remaining amount of PIP insurance coverage.<sup>69</sup>

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<sup>62</sup> *Kaminester*, 775 So.2d at 985.

<sup>63</sup> *Id.* at 986.

<sup>64</sup> See Report on Insurance Fraud, *supra* note 14 (stating the PIP insurance fraud, which includes inflated billing, leads to higher insurance premiums for all drivers).

<sup>65</sup> See *Rollins v. Pizzarelli*, 761 So.2d 294, 296-97 (Fla. 2000) (describing such a situation, where the victim's medical bills prior to trial were more than \$13,000 and she had suffered permanent injury).

<sup>66</sup> *Rollins*, 761 So.2d at 299.

<sup>67</sup> *Id.* at 301.

<sup>68</sup> *Id.* at 300.

<sup>69</sup> *Id.* at 298.

### III. “Render”-ing Medical Services Through the Use of an Independent Contractor<sup>70</sup>

At issue in *Regional MRI* was the billing of a Magnetic Resonance Imaging (“MRI”) scan.<sup>71</sup> In the world of PIP insurance fraud, MRI brokers are key players.<sup>72</sup> Typically, an MRI broker rents time from an MRI facility for approximately \$400 per test and sees his or her referred patients during the times the facility is rented.<sup>73</sup> The broker then bills the insurance company \$1,500-\$1,800 for each scan, sometimes even indicating that the scan was provided at the broker’s office.<sup>74</sup> This practice is prohibited under the Act.<sup>75</sup>

*Regional MRI* involved Nationwide’s refusal to pay PIP insurance benefits to the insured’s assignee, Regional MRI. Regional MRI submitted one bill requesting payment for both the MRI scan and the reading of it, although the reading of the scan had actually been performed by an independent contractor.<sup>76</sup> The scan is the “technical component” of the MRI, and the reading of it is referred to as the “professional component.”<sup>77</sup> Nationwide claimed that Regional MRI was not entitled to bill for the entire MRI service, because it had not performed the professional component, or, to use the wording of the relevant statute, it had not “rendered” the medical services for which it sought payment.<sup>78</sup>

The portion of the statute at issue in *Regional MRI*, Section 627.736(5)(a), reads as follows:

Any physician, hospital, clinic, or other person or institution *lawfully rendering treatment* to an insured person for a bodily injury covered by personal injury

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<sup>70</sup> *Reg’l MRI*, 884 So.2d at 1109-10.

<sup>71</sup> *Id.* at 1103; See Report on Insurance Fraud, *supra* note 14 (stating that MRI scans can often be beneficial to patients).

<sup>72</sup> Delegal & Pittman, *supra* note 17, at 1036.

<sup>73</sup> *Id.*

<sup>74</sup> *Id.*; see also *Med. Mgmt. Group, Inc. v. State Farm Mut. Auto. Ins. Co.*, 811 So.2d 705 (Fla. 5th Dist. Ct. App. 2002) (outlining an example of patient brokering and fee-splitting).

<sup>75</sup> FLA. STAT. ch. 817.505 (2000).

<sup>76</sup> *Reg’l MRI*, 884 So.2d at 1103.

<sup>77</sup> *Id.*

<sup>78</sup> *Id.* at 1104.

protection insurance may charge the insurer and injured party only a reasonable amount pursuant to this section *for the services and supplies rendered*, and the insurer providing such coverage *may pay for such charges directly to such person or institution lawfully rendering such treatment*, if the insured receiving such treatment or his or her guardian has countersigned the properly completed invoice, bill or claim form approved by the office upon which such charges are to be paid for *as having actually been rendered*, to the best knowledge of the insured or his or her guardian . . .<sup>79</sup>

Nationwide also argued that Regional MRI's passing on of any part of the payment to the independent contractor would be considered a fee split, which is a violation under the Act.<sup>80</sup> Section 817.505 prohibits patient brokering, stating:

(1) It is unlawful for any person, including any health care provider or health care facility, to:

(a) Offer or pay any commission, bonus, rebate, kickback, or bribe, directly or indirectly, in cash or in kind, or engage in any split-fee arrangement, in any form whatsoever, to induce the referral of patients or patronage from a health care provider or health care facility;

(b) Solicit or receive any commission, bonus, rebate, kickback, or bribe, directly or indirectly, in cash or in kind, or engage in any split-fee arrangement, in any form whatsoever, in return for referring patients or patronage to a health care provider or health care facility; or

(c) Aid, abet, advise or otherwise participate in the conduct prohibited under paragraph (a) or paragraph

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<sup>79</sup> FLA. STAT. § 627.736 (2003) (emphasis added).

<sup>80</sup> *Id.*; For an example of fee-splitting, see *Medical Management Group, Inc. v. State Farm Mut. Auto. Ins. Co.*, 811 So.2d 705 (Fla. 5th Dist. Ct. App. 2002).

(b).<sup>81</sup>

Nationwide requested that Regional MRI resubmit the claim form for the technical component only and that the radiologist bill separately for his reading of the scan.<sup>82</sup>

Regional MRI responded that the term “render” not only means to “perform,” but to “provide or furnish,” which it contends that it did.<sup>83</sup> Regional MRI also argued that it was not the legislature’s intent to prevent global billing when the service is provided by an independent contractor.<sup>84</sup>

The lower court found that Regional MRI did not “render” the professional component of the MRI, according to section 627.736(5)(a), as it found that to “render” meant that the entity was to perform the medical services for which they were seeking payment.<sup>85</sup> However, an important corollary to the Court’s holding in *Regional MRI* was the circuit court’s holding that there was no evidence of fee-splitting or patient brokering between the parties.<sup>86</sup>

On appeal, the Orange County Court certified a question of great public importance, namely: “Can a medical provider render a medical service under Section 627.736(5)(a) when the medical service was provided through the use of an independent contractor?”<sup>87</sup> The Fifth District Court of Appeal answered yes, reversing the circuit court,<sup>88</sup> and holding that as Regional MRI had “rendered” the services, it was entitled to payment for both the professional and technical components of the MRI scan.<sup>89</sup>

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<sup>81</sup> FLA. STAT. ch. 817.505.

<sup>82</sup> *Reg'l MRI*, 884 So.2d at 1103.

<sup>83</sup> *Id.* at 1106.

<sup>84</sup> *Id.*

<sup>85</sup> *Id.* at 1105.

<sup>86</sup> *Id.*

<sup>87</sup> *Reg'l MRI*, 884 So.2d at 1103.

<sup>88</sup> *Id.*

<sup>89</sup> *Id.* at 1111-12.

#### IV. Reconciliation of *Regional MRI* with Other PIP Benefits Cases

##### A. “Render” Has Been Narrowly Construed to Mean “To Perform”

In arriving at its conclusion in *Regional MRI*, the court considered the decisions of other courts in Florida on this issue, noting that some lower court decisions favored Nationwide’s argument that services from independent contractors should be billed separately,<sup>90</sup> while other decisions were consistent with the court’s ultimate decision to allow the global billing—that is, submitting one bill with one amount due for both components.<sup>91</sup>

The court noted that the issue of an independent contractor had been considered by a circuit court in *Motion X-Ray, Inc. v. State Farm Auto Ins. Co.*<sup>92</sup> The Orange County Circuit Court barred payment to Motion X-Ray for a videofluoroscopy test,<sup>93</sup> which was performed by an independent contractor.<sup>94</sup> In holding that Motion X-Ray had not rendered the videofluoroscopy service, as required by the Section 627.736 for payment of PIP benefits,<sup>95</sup> the court stated that “render” did not include the act of hiring an independent contractor to perform the services on Motion X-Ray’s behalf.<sup>96</sup>

The court’s ruling, however, is not surprising when viewed in light of its finding that Motion X-Ray engaged in deceptive practices

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<sup>90</sup> See *Motion X-Ray*, 10 Fla. L. Weekly Supp. 346a (Fla. Orange County Ct. 2002); *Radiology B. I*, 11 Fla. L. Weekly Supp. 251c (Fla. Broward County Ct. 2003).

<sup>91</sup> See *Radiology B II*, 10 Fla. L. Weekly Supp. 935a (Fla. Broward County Ct. 2003); *Prof'l Consulting Servs.*, 849 So.2d 446 (Fla. 2d DCA 003); *Oakland Park Open MRI*, 11 Fla. L. Weekly Supp. 259a (Fla. Broward County Ct. 2003); *Access MRI I*, 11 Fla. L. Weekly Supp. 727a (Fla. Duval County Ct. 2003); *Access MRI II*, 11 Fla. L. Weekly Supp. 439a (Fla. Duval County Ct. 2004); *Access MRI III*, 11 Fla. L. Weekly Supp. 563c (Fla. Duval County Ct. 2004).

<sup>92</sup> *Reg'l MRI* at 1107; *Motion X-Ray*, 10 Fla. L. Weekly Supp. 346a (Fla. Orange County Ct. 2002).

<sup>93</sup> Delegal & Pittman, *supra* note 17, at 1036.

<sup>94</sup> *Motion X-Ray*, 10 Fla. L. Weekly Supp. 346, ¶¶ 10, 87 (Fla. Orange County Ct. 2002).

<sup>95</sup> FLA. STAT. ch. 627.736(5)(a).

<sup>96</sup> *Motion X-Ray, Inc.*, 10 Fla. L. Weekly Supp. 346, ¶ 73.

on the claims form it submitted to the insurance company.<sup>97</sup> On the form, Motion X-Ray indicated that it had performed the services in its offices, when in actuality the services were provided by an independent contractor—Motion X-Ray only provided the *mobile* testing vehicle needed for the test.<sup>98</sup> The results of the videofluoroscopy test, which was performed by an unlicensed, independent contractor, were read by the patient's own chiropractor, not Motion X-Ray.<sup>99</sup> Moreover, Motion X-Ray did not pay the contractor a set fee for administering the test, but instead paid him a base fee plus a percentage of the total revenue collected.<sup>100</sup> Finally, Motion X-Ray was doing business under an unregistered name, Nu-Best Diagnostics Lab, Inc.<sup>101</sup> As a result, the court found that Motion X-Ray lacked standing because the patient's assignee was Nu-Best Diagnostics—an entity which did not legally exist.<sup>102</sup>

*Motion X-Ray* is distinguishable from *Regional MRI*, because the plaintiff in that case *Motion X-Ray* was merely a broker<sup>103</sup> and provided no services at all, whereas *Regional MRI* actually performed the technical component of the MRI.<sup>104</sup> Moreover, the independent contractor in *Regional MRI* was paid a flat rate for his services in reading the scan, regardless of whether *Regional MRI* was paid or not.<sup>105</sup>

*Radiology B & Services, Inc., v. Progressive Express Insurance Co.* (hereinafter "*Radiology B I*")<sup>106</sup> is another case, like *Motion X-Ray*, that seems to support a finding that "render" should be narrowly interpreted to mean to actually perform.<sup>107</sup> *Radiology B* performed an MRI scan but contracted with Dr. Roberto Rivera to

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<sup>97</sup> *Id.* at ¶¶ 48-71.

<sup>98</sup> *Id.* at ¶ 55.

<sup>99</sup> *Id.* at ¶¶ 16, 19.

<sup>100</sup> *Id.* at ¶ 11.

<sup>101</sup> *Motion X-Ray, Inc.*, 10 Fla. L. Weekly Supp. at 346, ¶¶ 17, 24, 30.

<sup>102</sup> *Id.* at ¶¶ 6(i), 14, 15, 17.

<sup>103</sup> *Id.* at ¶¶ 85-87.

<sup>104</sup> *Reg'l MRI*, 884 So.2d at 1103.

<sup>105</sup> *Id.* at 1111-1112.

<sup>106</sup> *Radiology B I*, 11 Fla. L. Weekly Supp. 251c (Fla. Broward County Ct. 2003). Note: The court's findings are cited as numbered in the opinion.

<sup>107</sup> *Id.* at ¶ 23.



interpret the scan—the professional component.<sup>108</sup> Radiology B paid Dr. Rivera for his services and then billed Progressive for both the technical and professional components of the MRI.<sup>109</sup> The court held that Radiology B. had not rendered the professional component and granted summary judgment in favor of the insurance company.<sup>110</sup>

On the surface, these facts seem remarkably similar to *Regional MRI*, where Regional MRI paid the radiologist to read the MRI scan, and then billed Nationwide for the MRI test and the radiologist's work.<sup>111</sup> However, *Radiology B I* differs from *Regional MRI* in that it involved an illegal fee-splitting arrangement and referral system.<sup>112</sup> Radiology B paid Dr. Rivera fifty dollars, and then billed Progressive \$250 for the professional component, netting a \$200 profit on each test.<sup>113</sup> In this system, the court found that Radiology B was “simply a middleman creating an unnecessary, useless, extra layer of health care costs.”<sup>114</sup> It stated: “[I]n effect, Radiology B. would be receiving a referral fee of \$200 per scan for brokering [the] patient to Dr. Rivera.”<sup>115</sup> This arrangement was found void on public policy grounds and was also prohibited by Section 817.505.<sup>116</sup> In granting summary judgment for Progressive, the court

<sup>108</sup> *Id.* at ¶¶ 5-6.

<sup>109</sup> *Id.* at ¶ 8.

<sup>110</sup> *Radiology B I*, 11 Fla. L. Weekly Supp. 251c, at ¶ 2.

<sup>111</sup> *Reg'l MRI*, 884 So.2d at 1103.

<sup>112</sup> *Radiology B. I*, 11 Fla. L. Weekly Supp. 251c, at ¶ 15.

<sup>113</sup> *Id.*

<sup>114</sup> *Id.* at ¶ 11.

<sup>115</sup> *Id.*

<sup>116</sup> *Id.* at ¶ 13; FLA. STAT. ch. 817.505 provides:

It is unlawful for any person . . . to:

(b) Solicit or receive any commission, bonus, rebate, kickback, or bribe, directly or indirectly, in cash or in kind, or engage in any split-fee arrangement, in any form whatsoever, in return for referring patients or patronage to a health care provider or health care facility.

*Id.*

FLA. STAT. ch. 456.054 (2000), which prohibits kickbacks, states:

As used in this section, the term “kickbacks” means a remuneration or payment back pursuant to an investment, interest, compensation, arrangement, or otherwise, by a provider of health care services or

stated that the form submitted by Radiology B was a “patent deception.”<sup>117</sup> The court stated that the independent contractor had actually “rendered” the services and thus Radiology B was not entitled to payment for them.<sup>118</sup>

### **B. The Broad Definition of “Render”: “To Provide” or “To Furnish”**

Conversely to the above examples, the *Regional MRI* court also analyzed cases that supported Regional MRI’s position that the medical provider “rendered” the services, despite part of the services being provided by an independent contractor.<sup>119</sup> Similar to the court in *Regional MRI*, these courts have adopted a liberal interpretation of “render,” which may include services provided through an independent contractor, reasoning that to do otherwise would defeat the legislative intent behind the Act.<sup>120</sup>

By way of illustration, in *Radiology B & Servs., Inc. v. Progressive Express Ins. Co.* [hereinafter *Radiology B II*], the court held that Radiology B had “rendered” the entire MRI service, where the MRI scan was performed by Radiology B but read by an

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items, of a portion of the charges for services rendered to a referring health care provider as an incentive or inducement to refer patients for future services or items, when the payment is not tax deductible as an ordinary and necessary business expense.

It is unlawful for any health care provider or any provider of health care services to offer, pay, solicit or receive a kickback, directly or indirectly, overtly or covertly, in cash or in kind, for referring or soliciting patients.

Violations of this section shall be considered patient brokering and shall be punishable as provided in § 817.505.

*Id.*

<sup>117</sup> *Radiology B I*, 11 Fla. L. Weekly Supp. 251c, at ¶ 24.

<sup>118</sup> *Radiology B I*, 11 Fla. L. Weekly Supp. 251c, at ¶ 28.

<sup>119</sup> See *Radiology B II*, 10 Fla. L. Weekly Supp. 935a (Fla. Broward County Ct. 2003); *Prof'l Consulting Servs.*, 849 So.2d 446 (Fla. 2d Dist. Ct. App. 2003); *Oakland Park Open MRI*, 11 Fla. L. Weekly Supp. 259a (Fla. Broward County Ct. 2003); *Access MRI I*, 11 Fla. L. Weekly Supp. 727a (Fla. Duval County Ct. 2003); *Access MRI II*, 11 Fla. L. Weekly Supp. 439a (Fla. Duval County Ct. 2004); *Access MRI III*, 11 Fla. L. Weekly Supp. 563c (Fla. Duval County Ct. 2004).

<sup>120</sup> See e.g., *Radiology B II*, 10 Fla. L. Weekly Supp. 935 at \*3 (Fla. Broward County Ct. 2003). Note: The pin cites refer to the page numbers of the print outs.

independent contractor.<sup>121</sup> The court explained that paying an independent contractor was not a violation of the split-fee statute<sup>122</sup>, since the contractor's compensation was not in exchange for referring patients.<sup>123</sup> The court also noted that Section 817.505 authorizes "payments to a health care provider or health care facility for professional consultation services."<sup>124</sup>

After finding that the parties had not engaged in a fee-splitting arrangement, the Broward County Circuit Court concluded that Radiology B. had rendered the MRI services, even those performed by the independent contractor.<sup>125</sup> The insurance company's contention that Radiology B. did not render the services was based on the fact that Radiology B. used an independent contractor instead of actually performing the professional component itself.<sup>126</sup> The court dispelled this by turning to the dictionary in ascertaining the "usual and customary meaning" of render.<sup>127</sup> The dictionary defined "render" as: ". . . to cause to be or become; make; . . . to do; perform; . . . to furnish; provide."<sup>128</sup> By finding that "render" not only meant "to perform" but also "to provide," the court concluded that Radiology B was the provider who had lawfully rendered the MRI services.<sup>129</sup>

*Radiology B II* is strikingly similar to *Regional MRI*. In both cases, there was a finding that no illegal fee-splitting arrangement existed.<sup>130</sup> The courts in both cases then noted that "render" meant "to provide" and thus that the MRI service centers had "rendered" the MRI service and were entitled to payment.<sup>131</sup>

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<sup>121</sup> See *Radiology B II*, 10 Fla. L. Weekly Supp. 935a, at \*6.

<sup>122</sup> FLA. STAT. ch. 817.505.

<sup>123</sup> *Radiology B II*, 10 Fla. L. Weekly Supp. 935a, at \*3.

<sup>124</sup> *Radiology B II*, 10 Fla. L. Weekly Supp. 935a, at \*3 (construing FLA. STAT. ch. 817.505(3)(c)).

<sup>125</sup> *Radiology B II*, 10 Fla. L. Weekly Supp. 935a, at \*4-5.

<sup>126</sup> *Id.* at \*3-4.

<sup>127</sup> *Id.* at \*4.

<sup>128</sup> *Id.*

<sup>129</sup> *Id.* at \*6.

<sup>130</sup> *Reg'l MRI*, 884 So.2d at 1105; *Radiology B II*, 10 Fla. L. Weekly Supp. 935a, at \*3.

<sup>131</sup> *Reg'l MRI*, 884 So.2d at 1109 (noting the reasoning in *Access MRI II*, 11 Fla. L. Weekly Supp. 439a (Fla. Duval County Ct. 2004)) and 1111-12; *Radiology*

In reaching their decision, the court in *Regional MRI* noted persuasive authority from the Second District, which held that an entity that was not listed among those enumerated in Section 627.736 could still be entitled to receive PIP benefits; the statutory categories “a physician, a hospital, a clinic, or another person lawfully rendering treatment” are not an exhaustive list.<sup>132</sup> In *Professional Consulting Services, Inc. v. Hartford Life and Accident Insurance Co.*, Professional Consulting Services, a billing service, sought payment from the insurance company for services provided to the insured by a chiropractor and a physician.<sup>133</sup> Hartford refused the claim, contending that it was only required to make payment to one of the four entities mentioned in the statute: a physician, a hospital, a clinic, or another person lawfully rendering treatment.<sup>134</sup>

The court disagreed,<sup>135</sup> reasoning that if the legislature did not intend for benefits to be paid to non-medical providers, it would have expressly prohibited it.<sup>136</sup> The court in *Professional* bolstered this argument by pointing out a 2001 amendment to Section 627.736, which states that “[a]n insurer or insured is not required to pay a claim made by a broker or by a person making a claim on behalf of a broker.”<sup>137</sup> It reasoned that if the four categories mentioned in the statute were meant to be an exhaustive list of the *only* parties that may be paid, then there would be no need for the 2001 amendment, as brokers are not mentioned in the statute.<sup>138</sup> The court cautioned that if the insurance company believed that the cost of a middleman, such as Professional Consulting, increased the cost of services to the point of unreasonableness, then it could challenge the payment of the claim on that basis.<sup>139</sup>

This case is significant because it broadens the scope of who can render services. The Second District found that a billing service

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*B II*, 10 Fla. L. Weekly Supp. 935a, at \*6.

<sup>132</sup> *Prof'l Consulting Servs.*, 849 So.2d at 446-47.

<sup>133</sup> *Id.* at 447.

<sup>134</sup> *Id.*; See FLA. STAT. ch. 627.736(5)(a) (“Any person, hospital, clinic, or other person, or institution lawfully rendering treatment . . . may charge . . .”).

<sup>135</sup> *Prof'l Consulting Servs.*, 849 So.2d at 448.

<sup>136</sup> *Id.* at 447-48.

<sup>137</sup> FLA. STAT. § 627.736(5)(b)(1), (*construed in Prof'l Consulting Servs., Inc.*, 849 So.2d at 448).

<sup>138</sup> *Prof'l Consulting Servs., Inc.*, 849 So.2d at 448.

<sup>139</sup> *Id.*

had rendered services, where they had not actually performed any medical services for the insured.<sup>140</sup> In *Regional MRI*, the billing entity had a much greater role than that of just a billing service.<sup>141</sup> Regional MRI actually performed the scan with its own equipment before sending it to Dr. Floyd for interpretation.<sup>142</sup> Thus, it seems that the Second District court that decided *Professional* would quickly conclude that Regional MRI had participated enough to “render” the entire MRI service.<sup>143</sup>

However persuasive the reasoning in *Professional* may be, the Fifth District (the court in *Regional MRI*) has previously emphasized that the entity must provide more than just a referral or billing service in order to have “rendered” services, as required for payment of PIP benefits.<sup>144</sup> In *Medical Management Group of Orlando, Inc. v. State Farm Mutual Automobile Insurance Co.* (hereinafter “*MMGO*”), the plaintiff, referred patients to Premier, an MRI provider and then allowed Premier to use its space to provide the MRI.<sup>145</sup> Premier then billed MMGO \$350 for the scan, and, in turn, MMGO billed State Farm \$1400.<sup>146</sup> The court found that this arrangement was, in effect, an illegal fee-splitting arrangement designed to provide reimbursement to MMGO for the patient referral, and was thus prohibited by Section 817.505.<sup>147</sup> While not directly discussing the meaning of “render,” it held that MMGO was not entitled to receive PIP benefits, because the billing service did not provide medically necessary services.<sup>148</sup>

The court in *Regional MRI* noted the seeming conflict

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<sup>140</sup> See *id.* at 447-48 (stating that an insured may assign an after-loss claim to a non-medical provider, who then stands in the shoes of the insured).

<sup>141</sup> *Reg'l MRI*, 884 So.2d at 1103.

<sup>142</sup> *Reg'l MRI*, 884 So.2d at 1103.

<sup>143</sup> See *Prof'l Consulting Servs.*, 849 So.2d at 448 (stating that PIP benefits may be assigned to a billing service).

<sup>144</sup> *Med. Mgmt. Group of Orlando, Inc. v. State Farm Mut. Auto. Ins. Co.*, [hereinafter *MMGO*] 811 So.2d 705, 706 (Fla. 5th Dist. Ct. App. 2002).

<sup>145</sup> *Id.*

<sup>146</sup> *Id.*

<sup>147</sup> *Id.*; see FLA. STAT. ch. 817.505 (2000); see also *Federated Nat'l Ins. Co. v. Physicians Charter Servs.*, 788 So.2d 403 (Fla. 3 Dist. Ct. App. 2001) (finding that entity not entitled to PIP insurance benefits where entity had not actually performed the MRI scan).

<sup>148</sup> *MMGO*, 811 So.2d at 706.

between its decision to allow Regional MRI to bill for the services of an independent contractor<sup>149</sup> and its decision in *MMGO* to prohibit a billing service from receiving payment.<sup>150</sup> It distinguished *MMGO* by pointing out that *MMGO* “did not provide any treatment or service.”<sup>151</sup> It then explained:

Regional MRI was responsible to Odell for the complete service, performed the scan, assumed the liability for the read, paid Dr. Floyd unconditionally for his work, undertook the billing and assumed the risk of loss if the MRI bill were not paid. Regional MRI is entitled to be paid.<sup>152</sup>

The Fifth District in *Regional MRI* also cited as persuasive in their decision to allow global billing a Broward County case, where it was found that “render” was not limited to performing the MRI services.<sup>153</sup> Oakland Park Open MRI used Dr. Rodan, an independent contractor, to perform the technical component of the scan and paid him \$55 per read.<sup>154</sup> Oakland then submitted a request for payment for both components, which was denied by Progressive on the basis that Oakland had not “rendered” the professional component of the MRI.<sup>155</sup>

The Broward County Court gave two reasons for its finding that Oakland had, in fact, rendered the entire MRI service—reasons which the Fifth District in *Regional MRI* cited in their opinion.<sup>156</sup> First, the court noted: “The term “rendering” as used in F.S. § 627.735(5) became part of Florida law in 1971 before the invention of MRI technology. Hence it cannot be said that the use of that term contemplated a prohibition on the contractual arrangement presented

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<sup>149</sup> *Reg'l MRI*, 884 So.2d at 1111-12.

<sup>150</sup> *MMGO*, 811 So.2d at 706-07.

<sup>151</sup> *Reg'l MRI*, 884 So.2d at 1111.

<sup>152</sup> *Id.* at 1111-12.

<sup>153</sup> See *Oakland Park Open MRI*, 11 Fla. L. Weekly Supp. 259a, at \*2 (stating that rendering included the ordering, gathering and forwarding the written interpretation to the insurance company and assuming the risk of non-payment of the claim).

<sup>154</sup> *Id.*

<sup>155</sup> *Id.*

<sup>156</sup> *Id.* at \*2; *Reg'l MRI*, 884 So.2d at 1108.

in this case.”<sup>157</sup> Second, it reasoned that Oakland Park was involved “in rendering the complete professional service that included ordering, gathering and forwarding the written interpretation, presentation of the claim to the insurer (all involving administrative expense) and the business risk that the entire claim might be subject to some other applicable insurance defense.”<sup>158</sup> Thus, the court in *Oakland Park* found that a medical provider could “render” MRI services, even where it used an independent contractor to perform part of the service.<sup>159</sup>

The circumstances in *Regional MRI* are analogous to those in *Oakland Park*. *Regional MRI* provided the MRI scan, as did *Oakland Park Open MRI*.<sup>160</sup> Dr. Floyd and Dr. Rodan—the independent contractors—were both paid a flat rate per scan for their work.<sup>161</sup> Lastly, both *Oakland Park Open MRI* and *Regional MRI* billed for the entire service using a global billing code.<sup>162</sup>

The court in *Regional MRI* also noted that several Duval County cases had broadly interpreted “render” to include situations where an entity provided services through an independent contractor.<sup>163</sup> A Duval County court stated that whether the professional component of an MRI is rendered by an employee of the medical service provider, or an independent contractor, is indistinguishable for payment of the PIP insurance claim.<sup>164</sup> In *Access MRI v. Nationwide Mutual Insurance Co.* (hereinafter “*Access P*”), the fact pattern mirrored that of *Regional MRI*—*Access MRI* provided the MRI scan, which was read by an independent contractor.<sup>165</sup> *Access MRI* then submitted one bill to the insurance

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<sup>157</sup> *Oakland Park Open MRI*, 11 Fla. L. Weekly Supp. 259a, at \*2; *Reg'l MRI*, 884 So.2d at 1108.

<sup>158</sup> *Oakland Park Open MRI*, 11 Fla. L. Weekly Supp. 259a, at \*2; *Reg'l MRI*, 884 So.2d at 1108.

<sup>159</sup> *Oakland Park Open MRI*, 11 Fla. L. Weekly Supp. 259a, at \*2-3.

<sup>160</sup> *Id.* at \*2; *Reg'l MRI*, 884 So.2d at 1103.

<sup>161</sup> *Oakland Park Open MRI*, 11 Fla. L. Weekly Supp. 259a, at \*2; *Reg'l MRI*, 884 So.2d at 1104.

<sup>162</sup> *Oakland Park Open MRI*, 11 Fla. L. Weekly Supp. 259a, at \*1; *Reg'l MRI*, 884 So.2d at 1103-04.

<sup>163</sup> *Reg'l MRI*, 884 So.2d at 1108-09.

<sup>164</sup> *Access MRI II*, 11 Fla. L. Weekly Supp. 439a, at \*2.

<sup>165</sup> *Id.* at \*1.

company for the procedure.<sup>166</sup> Nationwide refused payment, stating that the independent contractor was not an employee, and requested that Access MRI submit two separate bills.<sup>167</sup>

According to the court, whether the MRI scan was read by an employee or an independent contractor is “indistinguishable” for billing purposes:<sup>168</sup>

The total amount billed is the same, regardless of the status of the person who provides the professional component and it seems to the court that global billing in this instance is more economical, swift, and makes more sense, rather than requiring the filing of two forms, one filed by the entity providing the technical component and one filed by the person or entity providing the professional component.<sup>169</sup>

As in *Radiology B II* and *Regional MRI*, a key consideration in this ruling was that the arrangement between the medical provider and the independent contractor was not an illegal fee-split in violation of Section 817.505.<sup>170</sup> If the fee-split statute had been violated, the above reasoning would fail as the global billing would be less economical.<sup>171</sup> Here there was no suggestion that the medical provider was upcharging—submitting bills with inflated amounts to the insurance company.<sup>172</sup> The court noted that the amount due was

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<sup>166</sup> *Id.*

<sup>167</sup> *Id.*

<sup>168</sup> *Id.* at \*2.

<sup>169</sup> *Id.*

<sup>170</sup> *Access MRI II*, 11 Fla. L. Weekly Supp. 439a, at \*2-3; *Reg'l MRI*, 884 So.2d at 1106; *Radiology B II*, 10 Fla. L. Weekly Supp. 935a, at \*3.

<sup>171</sup> See *Access MRI II*, 11 Fla. L. Weekly Supp. 439a, at \*2.

<sup>172</sup> *Access MRI II*, 11 Fla. L. Weekly Supp. 439a, at \*3. The court in *Access MRI* notes:

The legislature had another opportunity to prohibit the use of independent contractors to perform the radiology interpretation which it amended Section 7 of Florida Statute 627.732 and added paragraph 14 which states:

(14) “Upcoding” means an action that submits a billing code that would result in payment greater in amount than would be paid using a billing code that accurately describes the services performed. The term does not include an otherwise lawful bill by a magnetic resonance imaging facility, which globally combines both technical and professional components, if the amount



not more than the sum of the professional and technical components.<sup>173</sup>

Additionally, the *Regional MRI* court adopted the reasoning set forth in *Access MRI* that independent contractors could be medical providers under the language of the Health Care Clinic Act.<sup>174</sup> This recent Florida legislation for clinics that handle PIP claims requires the clinics to provide information about the “. . . medical providers employed or under contract with the clinic.”<sup>175</sup> This language presupposes that some medical providers will be independent contractors instead of employees of the clinic,<sup>176</sup> leading to the conclusion that independent contractors can “render” medical services on behalf of the clinic. The *Regional MRI* court also noted that other judges in Duval County have made similar rulings.<sup>177</sup>

*Ack-Ten Group LL v. Progressive Express Insurance Co.*, which, although not explicitly relied on by the Fifth District in *Regional MRI*, nonetheless provides some clarification on the issue of MRI billing.<sup>178</sup> In a case which was factually similar to *Regional MRI*, a circuit court in Palm Beach County held that PIP benefits were properly payable where an entity billed for the entire MRI service using a global billing code when it performed the MRI scan and paid an independent contractor to interpret it.<sup>179</sup> *Ack-Ten Group* owned or leased all of the necessary equipment and paid Boca Radiology—the independent contractor—the same rate for each MRI

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of the global bill is not more than the components if billed separately; however, payment of such a bill constitutes payment in full for all components of such service.

*Id.* at \*3.

<sup>173</sup> *Access MRI II*, 11 Fla. L. Weekly Supp. 439a, at \*3.

<sup>174</sup> *Access MRI II*, 11 Fla. L. Weekly Supp. 439a, at \*3.

<sup>175</sup> *Reg'l MRI*, 884 So.2d at 1109.

<sup>176</sup> *Id.* at 1109-10 (citing *Access MRI II*, 11 Fla. L. Weekly Supp. 439a, at \*3).

<sup>177</sup> See *Access MRI III*, 11 Fla. L. Weekly Supp. 563c, at \*4 (finding that use of an independent contractor to perform the professional component was not unlawful where the MRI facility owns or leases 100% of the equipment); see *Access MRI I*, 11 Fla. L. Weekly Supp. 727 at \*5 (finding that insurance company should pay PIP benefits where legitimate global bill for both the professional and technical components of an MRI was substantially equal to what it would have been if billed separately).

<sup>178</sup> *Ack-Ten Group, LL v. Progressive Express Ins. Co.*, 11 Fla. L. Weekly Supp. 49c (Fla. Palm Beach County Ct. 2003).

<sup>179</sup> *Id.* at \*1.

interpretation.<sup>180</sup> The insurance company argued that Ack-Ten's relationship with Boca Radiology was illegal fee-splitting and patient brokering.<sup>181</sup> Progressive originally refused to pay the PIP benefits because it contended that the use of a global billing code was improper.<sup>182</sup> The court held that the relationship between Ack-Ten and Boca Radiology did not violate Florida's fee-splitting and brokering statutes.<sup>183</sup> It reasoned that MRI services were an appropriate subject for PIP benefits and that Boca Radiology's services were a "necessary component of the MRI scan."<sup>184</sup> In *Regional MRI*, it could be argued that Dr. Floyd's service in interpreting the read was similarly necessary to the MRI scan.<sup>185</sup>

## V. The Impact of the *Regional MRI* Case on Consumers

The decision in *Regional MRI* is a victory for consumers because the insured's MRI medical bills will be paid quickly, as the medical provider is authorized to submit one bill for both components of the MRI, instead of two separate bills.<sup>186</sup> This reduction in paperwork will likely lead to quicker payment, which effectuates the purpose of Florida's PIP legislation that the insured should be allowed to get on with his or her life "without undue financial interruption."<sup>187</sup>

However, global billing does make it easier for an unethical service to hide excessive fees instead of each entity submitting their own bill.<sup>188</sup> Despite the prohibitory language in the statute barring brokering and fee splitting, consumers must still keep a vigilant eye on the amount that the medical providers are billing. The Florida legislature has recognized the danger of insurance fraud in this area because of the potential for medical providers to bill and receive

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<sup>180</sup> *Id.*

<sup>181</sup> *Id.*

<sup>182</sup> *Id.*

<sup>183</sup> *Id.* at \*2.

<sup>184</sup> *Ack-Ten Group*, 11 Fla. L. Weekly Supp. 49c, at \*2.

<sup>185</sup> *Reg'l MRI*, 884 So.2d at 1104.

<sup>186</sup> *Id.* at 1111-12.

<sup>187</sup> *Ivey*, 774 So.2d at 683-84.

<sup>188</sup> Report on Insurance Fraud, *supra* note 14 (discussing the mechanics of MRI brokering).

quick payout of the PIP benefits, whether or not such payment is reasonable.<sup>189</sup> The insured must be aware of this danger because excessive billing will eventually result in higher premium payments for all consumers.<sup>190</sup>

Consumers can protect themselves by requesting a copy of the statement submitted by the medical provider to the insurance company for the amount due so that the consumer can monitor how much of their PIP benefits are being charged for each service.<sup>191</sup> Consumers should review this statement for its accuracy and determine if they believe the amount charged is reasonable. If the consumer believes the amount requested is unreasonable or does not accurately reflect the services, he should notify the insurance company as soon as possible. It is important for consumers to realize that their insurance company is paying out their PIP benefits even though they themselves are not being billed directly.<sup>192</sup> However, as highlighted in cases similar to *Regional MRI*, where there is no evidence of fraud, it is an excellent result for the insured to have the medical provider present one bill for multiple services, because it makes it easier for the injured person to get the necessary medical treatment without worrying about how to pay for it.

With PIP coverage, Average Joe can now get his medical bills paid for by his own insurance company, so he won't be forced to declare bankruptcy. If an MRI scan is necessary, Average Joe can now go to XYZ MRI Services and get an the scan. Then XYZ can send the scan to Dr. Contractor to interpret. Based on the holding in *Regional MRI*, XYZ can then bill for both its scan and for Dr. Contractor's interpretation of it.<sup>193</sup> As long as there was no evidence of fraud, the Fifth District would likely find that XYZ MRI "rendered" the entire MRI service and order the insurance company to pay the claim. Despite his accident and injuries, with PIP coverage,

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<sup>189</sup> *Id.*

<sup>190</sup> *See id.* (stating that insurance fraud results in increased premiums for all drivers).

<sup>191</sup> *See* Payment of PIP Benefits, <http://www.usalaw.com/pipserv/payments.html> (last visited May 10, 2005) (explaining the paperwork that must be submitted to the insurance company in order to receive payment).

<sup>192</sup> *See* Medical Benefits Under Florida's No-Fault (PIP) Law, <http://www.usalaw.com/pipserv/medical.html> (last visited May 10, 2005).

<sup>193</sup> Joe would only be responsible for 20 percent of his medical bills, after he reaches his deductible.

Joe is able to continue his life without unexpected financial burden.<sup>194</sup>

## VI. Conclusion

The decision of the Court in *Regional MRI* provides additional guidance in the area of global billing for PIP insurance benefits, as it expands the definition of “render” to mean “to furnish” or “to provide” and includes independent contractors when there is no evidence of fee splitting or brokering between the contractor and the clinic.<sup>195</sup> It is in line with the legislative history of the Florida Motor Vehicle No-Fault Law,<sup>196</sup> in that the *Regional MRI* court’s decision makes it easier for claims to be paid expediently so that consumer is not bogged down with trying to get his or her claims paid.<sup>197</sup> However, insurance companies and consumers must keep alert for any evidence of fee splitting or brokering, because a finding that such an unlawful arrangement exists usually is hand-in-hand with a finding that the billing entity is not entitled to payment of PIP benefits.

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<sup>194</sup> *Ivey*, 774 So.2d at 683-84.

<sup>195</sup> *Reg’l MRI*, 884 So.2d at 1111-12.

<sup>196</sup> FLA. STAT. ch. 627.730 (2003).

<sup>197</sup> *Ivey*, 774 So.2d at 683-84.

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