

IN THE CIRCUIT COURT OF THE 17TH
JUDICIAL CIRCUIT IN AND FOR
BROWARD COUNTY, FLORIDA

CASE NO. CACE-13-018792

CLASS REPRESENTATION

GAIL PIERCE, on behalf of herself
and all others similarly situated

Plaintiff,

vs.

ALLSTATE INSURANCE COMPANY,
ALLSTATE INDEMNITY COMPANY,
ALLSTATE PROPERTY AND CASUALTY
INSURANCE COMPANY, ALLSTATE
FIRE AND CASUALTY INSURANCE
COMPANY, ENCOMPASS INDEMNITY
COMPANY, ENCOMPASS FLORIDIAN
INSURANCE COMPANY, and
ENCOMPASS FLORIDIAN INDEMNITY
COMPANY,

Defendants.

AMENDED AFFIDAVIT OF MARK SESSA

I, Mark Sessa, hereby declare as follows:

1. I am over eighteen years of age and make this statement based upon personal knowledge.

2. I currently am employed by Encompass Insurance Company as a Regional Claim Leader. My business address is 1130 Route 22 East, Suite 200, Bridgewater, New Jersey 08807.

I have been employed by Encompass Insurance Company since 1999.

3. Encompass Indemnity, Encompass Floridian Insurance Company, and Encompass Floridian Indemnity Company (collectively “Encompass”) are Illinois insurance corporations with their principal places of business in Northbrook, Illinois.

4. As a Regional Claim Leader for Encompass Insurance Company, I am familiar with and have knowledge of PIP claim-related business records maintained by Encompass with regard to the automobile insurance policies sold in Florida.

5. In 2018, I was aware of the pendency of *Progressive Select Ins. Co. v. Fla. Hosp. Med. Ctr.*, Case No. SC18-278 in the Florida Supreme Court (“*Progressive*”) regarding the interpretation of Fla. Stat. 627.739(2) and the methodology for application of PIP deductibles. Specifically, the *Progressive* case presented the question of whether PIP deductibles are to be applied to the amount billed for medical services and supplies before application of the authorized statutory reimbursement limitations under Fla. Stat 627.736 (5)(a)1..

6. Encompass discontinued issuance of new Florida Automobile policies and renewal of existing Florida Automobile policies beginning in February 2013.

7. In 2018 and during prior years, Encompass interpreted Fla. Stat. 627.739(2) as establishing a methodology for application of PIP deductibles after application of the authorized statutory reimbursement limitations under Fla. Stat 627.736 (5)(a)1.. Accordingly, when paying PIP benefits pursuant to a Florida automobile policy which included a PIP deductible, it was Encompass’ business practice to first apply the authorized statutory reimbursement limitations under Fla. Stat 627.736 (5)(a)1. to the amount billed by the provider and then apply the applicable deductible amount to the charges as reduced in this manner.

8. The methods used by Encompass in 2018 and years prior are reflected in the following examples:

<u>Encompass' Pre-2019 Method of Applying PIP Deductible to a Hospital Charge</u>	
\$2,781.00	Provider charge
<u> x 75%</u>	Applying Fee Schedule
\$2,085.75	
- <u>\$1,000.00</u>	Insured's PIP Deductible
\$1,085.75	
<u> x 80%</u>	
\$ 868.60	<u>Total insurer payment due to provider</u>

<u>Encompass' Pre-2019 Method of Applying PIP Deductible to a Medicare Fee Schedule Charge</u>	
\$1,550.00	Provider charge
<u>\$ 800.00</u>	Applying Fee Schedule
\$ 800.00	
- <u>\$ 500.00</u>	Insured's PIP Deductible
\$ 300.00	
<u> x 80%</u>	
\$ 240.00	<u>Total insurer payment due to provider</u>

9. On December 28, 2018, the Florida Supreme Court issued its decision in Progressive. (The opinion appears at 260 So. 3d 219.) It specifically held that “[a] plain reading of the statutory provisions makes clear that the deductible must be subtracted from the provider’s charges before the reimbursement limitation is applied.” 260 So. 3d at 223.

10. I was also involved in the development of the Encompass Deductible Mitigation Plan. The plan identified claims where there was a PIP benefit claim under an insurance policy with a PIP deductible which had been issued (the “Encompass Deductible Mitigation Review”).

11. The time period for the Deductible Mitigation Review involved Encompass claims for PIP benefits under policies with a PIP deductible with a date of loss between February 2008 and October 8, 2013.

12. The claims identified in the Encompass Deductible Mitigation Review were then analyzed to recalculate benefits payments subject to the PIP deductible as if PIP deductibles were to be applied to the amount billed for medical services and supplies before application of the authorized statutory reimbursement limitations under Fla. Stat 627.736 (5)(a)1.

13. In performing the recalculation of PIP benefits payments for the claims identified in the Deductible Mitigation Review which were subject to a PIP deductible, Encompass subtracted the deductible amount from the amount billed for medical services and supplies before application of the authorized statutory reimbursement limitations under Fla. Stat 627.736 (5)(a)1.

Examples of this deductible recalculation are as follows:

Encompass' Post- <i>Progressive</i> Method of Applying PIP Deductible to a Hospital Charge	
\$2,781.00	Provider charge
- <u>\$1,000.00</u>	Insured's PIP deductible
\$1,781.00	Provider charge less deductible
<u> x 75%</u>	Applying Fee Schedule
\$1,335.75	
<u> x 80%</u>	
\$ 908.60	Total insurer payment due to provider

Encompass' Post-Progressive Method of Applying PIP Deductible to a Medicare Fee Schedule Charge

\$1,550.00	Provider charge
- <u>\$ 500.00</u>	Insured's PIP deductible
\$1,050.00	Provider charge less deductible
\$ 800.00	Applying Fee Schedule because net is greater than Fee Schedule
<u> x 80%</u>	
\$ 640.00	<u>Total insurer payment due to provider</u>

14. Encompass calculated remediation payments to the claims identified in the Encompass Deductible Mitigation Review based on the foregoing recalculations. Using those examples, the remediation benefit amounts were calculated as follows:

Remediation Benefit for Hospital Charge:

\$ 908.60	Total insurer payment due to provider per Post-Progressive Method
- <u>\$ 868.60</u>	Total insurer payment made to provider per Pre-Progressive Method
\$ 40.00	<u>Remediation benefit amount</u>

Remediation Benefit for Medicare Fee Schedule Charge:

\$ 640.00	Total insurer payment due to provider per Post-Progressive Method
- <u>\$ 240.00</u>	Total insurer payment made to provider per Pre-Progressive Method
\$ 400.00	<u>Remediation benefit amount</u>

15. On April 8, 2019, Encompass issued and mailed the checks in accordance with the Deductible Mitigation Plan. Encompass mailed 56 checks totaling \$9,131.94. The payments

issued included the recalculated benefit amount plus interest (calculated from the date the bill was received through April 8, 2019).

16. For checks that were returned undeliverable, Encompass conducted a LexisNexis search for updated addresses. When Encompass discovered an updated address, it reissued a check. All reissued payments included interest recalculated from the date the bill was received through April 8, 2019).

17. This Amended Affidavit is being provided to correct a scrivener's error in Paragraph 15 of my Affidavit, dated August 2019, which states an incorrect total amount of the 56 checks mailed by Encompass in accordance with the Deductible Mitigation Plan stated.

Further Affiant sayeth not.

Mark Sessa

Mark Sessa

STATE OF: FLORIDA

COUNTY OF: BROWARD

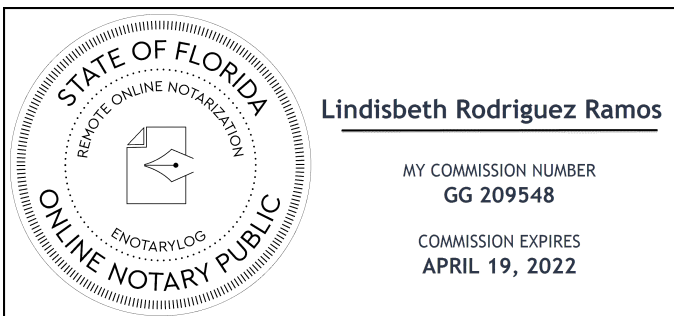
BEFORE ME, the undersigned authority, by means of physical presence or online notarization, appeared MARK SESSA, who has verified his identity by answering questions and/or producing New Jersey DL as identification, and who after being duly sworn, deposes and says that he has read the foregoing Amended Affidavit, and states that the information contained is true and correct.

SWORN AND SUBSCRIBED before me this 21 day of May, 2020.

Lindisbeth Rodriguez Ramos

Notary Public

My commission expires: 04/19/2022



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