

**IN THE CIRCUIT COURT OF THE SEVENTH JUDICIAL CIRCUIT  
IN AND FOR VOLUSIA COUNTY, FLORIDA  
APPELLATE DIVISION**

**ADVANTACARE OF FLORIDA,  
LLC, a.a.o. Blanca Boucree,  
Appellants,**

**Case No: 2015 10038 APCC  
L.T. No: 2015 30053 COCI**

**v.**

**GEICO INDEMNITY COMPANY,  
Appellee.**

\_\_\_\_\_ /

**ORDER GRANTING APPELLANT'S MOTION  
BASED ON CONTROLLING AND DISPOSITIVE  
FLORIDA SUPREME COURT DECISION**

THIS MATTER came before the Court on Advantacare of Florida, a.a.o. Blanca Boucree's ("Advantacare" or "Appellants") "Motion to Vacate Stay, Dispense with Oral Arguments, and Reverse Based on Controlling and Dispositive Florida Supreme Court Decision." The Court, having reviewed the court file and the Florida Supreme Court's opinion in *Progressive Select Ins. Co. v. Florida Hosp. Med. Ctr.*, No. SC18-278, 260 So. 3d 219, 2018 WL 6816810 (Fla. Dec. 28, 2018), finds as follows:

On October 22, 2015, the trial court entered Final Summary Judgment in favor of Defendant, Geico Indemnity Company ("Geico"). The only issue before the court was whether Geico had improperly calculated the amount of the deductible under Florida's personal injury statute. Geico claimed that the deductible must be applied after a reduction of all of the medical charges pursuant to section 627.736(5)(a)1. Conversely, Advantacare argued that the deductible must be applied before any reduction of the medical charges. At the time that this appeal was filed, the Fifth District Court of Appeal had not yet addressed the issue.

While this appeal was pending, however, the Fifth District Court held that the deductible had to be subtracted from the total medical charges before application of the statutory reimbursement limitation. *Progressive Select Ins. Co. v. Florida Hosp. Med. Ctr.*, 236 So. 3d 1183 (Fla. 5th DCA 2018) ("*Progressive*"). Additionally, the Fifth District Court certified the following question to the Florida Supreme Court as one of great public importance:

WHEN CALCULATING THE AMOUNT OF PIP BENEFITS DUE AN  
INSURED, DOES SECTION 627.739(2), FLORIDA STATUTES, REQUIRE  
THAT THE DEDUCTIBLE BE SUBTRACTED FROM THE TOTAL  
AMOUNT OF MEDICAL CHARGES BEFORE APPLYING THE  
REIMBURSEMENT LIMITATION UNDER SECTION 627.736(5)(a)1.b., OR  
MUST THE REIMBURSEMENT LIMITATION BE APPLIED FIRST AND  
THE DEDUCTIBLE SUBTRACTED FROM THE REMAINING AMOUNT?

*Progressive*, 236 So. 3d at 1192. Shortly thereafter, the Fourth District Court ruled to the contrary and certified conflict with the Fifth District Court's decision in *Progressive. State Farm Mut. Auto. Ins. Co. v. Care Wellness Ctr., LLC*, 240 So. 3d 22 (Fla. 4th DCA 2018), *disapproved of by Progressive Select Ins. Co. v. Florida Hosp. Med. Ctr.*, 260 So. 3d 219 (Fla. 2018).

The Florida Supreme Court accepted jurisdiction. On December 28, 2018, the Florida Supreme Court, resolved the conflict and approved the Fifth District Court's decision in *Progressive*. The Florida Supreme Court held that section 627.739(2), Florida Statutes requires that the deductible be applied to the total medical charges before applying the reimbursement limitation under section 627.736(5)(a)1.b. *Progressive Select Ins. Co. v. Florida Hosp. Med. Ctr.*, 260 So. 3d 219 (Fla. 2018).

Accordingly, it is therefore

ORDERED AND ADJUDGED that consistent with the Florida Supreme Court decision in *Progressive Select Ins. Co. v. Florida Hosp. Med. Ctr.*, 260 So. 3d 219 (Fla. 2018):

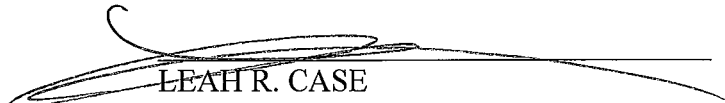
1. Appellant's Motion to Reverse is GRANTED.
2. The case is hereby REVERSED and REMANDED with directions for the trial court to enter a final order in favor of Appellants in accordance with *Progressive Select Ins. Co. v. Florida Hosp. Med. Ctr.*, supra, and this Court's ruling.
3. Appellant's Motions to Vacate Stay and to Dispense with Oral Arguments are DENIED as moot.

DONE and ORDERED in Chambers at Daytona Beach, Volusia County, Florida this 1 of March, 2019.

April



KAREN ADAMS FOXMAN  
CIRCUIT COURT JUDGE



LEAH R. CASE  
CIRCUIT COURT JUDGE

Copies to:

Appellant Counsel, Kimberly Simoes, Esq., David Caldevilla, Esq.

Appellee Counsel, Louis Schulman, Esq., Scott W. Dutton, Esq.

Angela A. Dempsey, County Court Judge

David A. Cromartie, County Court Judge