

**IN THE CIRCUIT COURT FOR THE THIRTEENTH JUDICIAL CIRCUIT
IN AND FOR HILLSBOROUGH COUNTY, STATE OF FLORIDA
CIVIL DIVISION**

**AFO IMAGING, INC., as assignee, individually,
and on behalf of all those similarly situated.** / **Case No. 08-21489**
Division I

Plaintiff,

v.

**COTTON STATES MUTUAL INSURANCE
COMPANY,**

Defendant.

ANSWER AND AFFIRMATIVE DEFENSES

Defendant, Cotton States Mutual Insurance Company (“Cotton States”) by and through its undersigned counsel, hereby responds to Plaintiff, AFO Imaging (“AFO”)’s Class Action Complaint as follows:

JURISDICTION, PARTIES AND VENUE

1. Cotton States admits that AFO purports to assert an action for damages in excess of \$15,000 exclusive of pre-judgment interest, court costs, and attorney’s fees. Otherwise, denied.
2. Cotton States is without sufficient knowledge to admit or deny the allegations, and therefore, denies same.
3. Admitted that Cotton States is a foreign corporation with its principal place of business in Atlanta, Georgia and that Cotton States has transacted business in Florida.
4. Admitted for venue purposes only. Otherwise, Cotton States denies that AFO has stated a claim upon which relief can be granted.
5. Denied.

BACKGROUND INFORMATION REGARDING THE PATIENT-ASSIGNOR

6. Upon information and belief, admitted.

7. Admitted that Cotton States issued Policy No. FPA 3211937 to Kamla Levasseur, for the period from November 21, 2007 to May 21, 2008 subject to all the terms, conditions, limitations, endorsement, and exclusions of the Policy. A copy of the Policy has been provided to AFO. All other allegations are denied.

8. Admitted that AFO submitted a bill to Cotton States for a MRI service rendered to Ms. Levasseur on or about March 14, 2008. Otherwise, Cotton States is without sufficient knowledge to admit or deny the remaining allegations and, therefore, denies same.

9. Cotton States is without sufficient knowledge to admit or deny the allegations, and therefore, denies same.

10. Cotton States is without sufficient knowledge to admit or deny the allegations, and therefore, denies same.

BACKGROUND INFORMATION - PIP STATUTORY PROVISIONS REGARDING MRI SERVICES

11. AFO alleges a legal conclusion to which no response is required. To the extent facts are alleged, Cotton States denies same.

12. AFO alleges a legal conclusion to which no response is required. To the extent facts are alleged, Cotton States denies same.

13. AFO alleges a legal conclusion to which no response is required. To the extent facts are alleged, Cotton States denies same.

14. AFO alleges a legal conclusion to which no response is required. To the extent facts are alleged, Cotton States denies same.

15. AFO alleges a legal conclusion to which no response is required. To the extent facts are alleged, Cotton States denies same.

16. AFO alleges a legal conclusion to which no response is required. To the extent facts are alleged, Cotton States denies same.

17. Cotton States denies that AFO has quoted amendment CS/CS/SB 2012 in full. The amendment speaks for itself. To the extent facts are alleged, Cotton States denies same.

18. AFO alleges a legal conclusion to which no response is required. To the extent facts are alleged, Cotton States denies same.

19. AFO alleges a legal conclusion to which no response is required. To the extent facts are alleged, Cotton States denies same.

20. AFO alleges a legal conclusion to which no response is required. To the extent facts are alleged, Cotton States denies same.

21. AFO alleges a legal conclusion to which no response is required. To the extent facts are alleged, Cotton States denies same.

22. Admitted that a bona fide controversy exists between AFO and Cotton States regarding the proper prices established for MRI services pursuant to Section 627.736, Florida Statutes (2007-2008). Otherwise, denied.

**BACKGROUND INFORMATION CONCERNING THE INSURANCE COMPANY'S
"IMPROPER" 2007 MEDICARE PART B REIMBURSEMENT METHODOLOGY**

23. Admitted that AFO submitted a bill to Cotton States for an MRI service rendered to Ms. Levasseur on or about March 14, 2008. Otherwise, denied.

24. Denied.

25. Denied.

26. Denied.

CLASS ACTION ALLEGATIONS

27. Denied that AFO has adequately defined a class of plaintiffs that may be suitable for class certification. All other allegations are denied.

28. Denied that AFO has adequately defined a sub-class of plaintiffs that may be suitable for class certification.

29. Denied.

30. Denied.

31. Denied.

32. Denied.

33. Denied.

34. Denied.

35. Denied.

36. Cotton States is without sufficient knowledge to admit or deny the allegations, and therefore, denies same.

37. Denied.

38. Denied.

39. Denied.

COUNT I – DECLARATORY RELIEF

40. Admitted that AFO purports to file an action for declaratory relief pursuant to Chapter 86, Florida Statutes.

41. Cotton States adopts its responses previously set forth in Paragraphs 1-39 as if set forth in full.

42. AFO alleges a legal conclusion to which no response is required. To the extent facts are alleged, Cotton States denies same.

43. Admitted.

44. Admitted that MRI providers are entitled to payment up to the maximum amount authorized by Section 627.736(5)(a), Florida Statutes (2007-2008). Otherwise, denied.

45. Admitted.

46. AFO alleges a legal conclusion and/or a hypothetical to which no response is required. To the extent facts are alleged, Cotton States denies same.

47. AFO alleges a legal conclusion and/or a hypothetical to which no response is required. To the extent facts are alleged, Cotton States denies same.

48. AFO alleges a legal conclusion and/or a hypothetical to which no response is required. To the extent facts are alleged, Cotton States denies same.

49. Denied.

50. Denied.

51. AFO alleges a legal conclusion to which no response is required. To the extent facts are alleged, Cotton States denies same.

52. AFO alleges a legal conclusion to which no response is required. To the extent facts are alleged, Cotton States denies same. Otherwise, Cotton States is without sufficient knowledge to admit or deny allegations related to the mental state of AFO and/or putative class members, and therefore, denies same.

53. Denied.

COUNT II – INJUNCTIVE RELIEF

54. Admitted that AFO purports to file a common law action for injunctive relief.

55. Cotton States adopts its responses previously set forth in Paragraphs 1-39 as if set forth in full.

56. AFO alleges a legal conclusion to which no response is required. To the extent facts are alleged, Cotton States denies same.

57. Admitted.

58. Denied.

59. Denied.

60. Denied.

61. Denied.

62. Denied.

63. Denied.

COUNT III – CLAIM FOR NO FAULT BENEFITS

64. Admitted that AFO purports to file an action for no-fault benefits pursuant to Section 627.736, Florida Statutes (2007-2008).

65. Cotton States adopts its responses previously set forth in Paragraphs 1-39 as if set forth in full.

66. Admitted.

67. Denied.

68. Denied.

69. Denied.

70. Admitted that AFO demands that an escrow fund be established. However, AFO has not within the Class Action Complaint, or at anytime subsequent thereto, attempted to obtain a court order requiring the establishment of an escrow fund. Additionally AFO has failed to allege the basis for any amount that is to be escrowed and has otherwise failed to allege a statutory or legal basis for the establishment of an escrow fund. Finally, before AFO brought suit, Ms. Levasseur's full PIP coverage limit of \$10,000.00 was paid and no PIP coverage limits remain.

71. Denied.

AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE

To the extent that AFO, as an assignee of Kamla Levasseur, and/or putative class members failed to satisfy conditions precedent before filing this action, including without limitation, the failure to satisfy the demand letter requirement of Section 627.736, Florida Statutes (2007-2008), AFO and/or putative class members lack standing to sue Cotton States.

SECOND AFFIRMATIVE DEFENSE

The claims of AFO, as an assignee of Kamla Levasseur, and those of the putative class members are barred to the extent that AFO, as an assignee of Kamla Levasseur, and/or the putative class members exhausted benefits under their respective policy of insurance.

THIRD AFFIRMATIVE DEFENSE

Cotton States properly paid Florida MRI providers the required amount for MRI services pursuant to Section 627.736, Florida Statutes (2007-2008).

FOURTH AFFIRMATIVE DEFENSE

This Court lacks jurisdiction over the subject matter of this action because the amount in controversy does not exceed the sum of \$15,000, exclusive of interest, costs, and attorney's fees.

FIFTH AFFIRMATIVE DEFENSE

AFO, as an assignee of Kamla Levasseur, is estopped by its own actions and course of conduct from pursuing this action. Cotton States received an undated demand letter from AFO's counsel demanding an additional \$183.76 for a MRI service rendered to Ms. Levasseur. AFO's counsel attached the Assignment of Benefits signed by Ms. Levasseur but did not provide any other documents or information that would support the payment of additional amounts to AFO.

In response to the demand letter, Cotton States repeatedly called AFO's counsel and left messages asking him to return his calls. AFO's counsel never returned any of the phone calls. Cotton States also wrote to AFO's counsel on two occasions requesting a copy of the bill in question so that Cotton States could determine whether any additional amount was owed. Both letters were delivered to and signed for by the office of AFO's counsel, but no response was ever received from AFO's counsel.

Meanwhile, Ms. Levassuer and/or other providers continued to submit other claims and bills for which payment was sought under Ms. Levassuer's PIP coverage. As of September 4, 2008, the full PIP coverage limit of \$10,000.00 was paid and no PIP coverage limits remain. AFO is therefore estopped by its own actions and course of conduct from pursuing this action and has waived any rights it may have had to the remaining policy limits that were paid to other providers and to Ms. Levassuer.

SIXTH AFFIRMATIVE DEFENSE

Neither AFO, as an assignee of Kamla Levasseur, nor the putative class members are entitled to equitable relief because they have an adequate remedy at law.

SEVENTH AFFIRMATIVE DEFENSE

Class certification is inappropriate in this action because the putative class members are not so numerous that separate joinder of each member is impracticable.

EIGHTH AFFIRMATIVE DEFENSE

Class certification is inappropriate because the claims of AFO, as an assignee of Kamla Levasseur, or the defenses to such claims do not raise questions of law or fact which are common to the claims of the putative class members or the defenses to such claims.

NINTH AFFIRMATIVE DEFENSE

Class certification is inappropriate because the claims of AFO, as an assignee of Kamla Levasseur, or the defenses to such claims are not typical of the claims of the putative class members or the defenses to such claims.

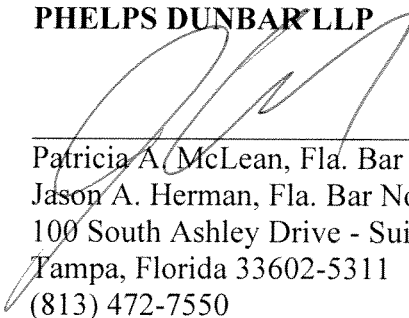
TENTH AFFIRMATIVE DEFENSE

AFO, as an assignee of Kamla Levasseur, cannot fairly and adequately protect and represent the interests the putative class members.

WHEREFORE, Cotton States requests judgment in its favor on AFO's Class Action Complaint, an award of costs for this action, and such other relief that the Court deems just under the circumstances.

Respectfully submitted,

PHELPS DUNBAR LLP



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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the foregoing has been served on:

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David M. Caldevilla
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by U.S. Mail this 20th day of July, 2009.

Attorney

