

IN THE SUPERIOR COURT OF DELAWARE

IN AND FOR NEW CASTLE COUNTY

STATE OF DELAWARE INSURANCE)
COVERAGE OFFICE, a/s/o Delaware)
Department of Transportation)

Plaintiff,)

v.)

CHARLES A. CHRISTENSON,)

Defendant.)

C.A. No. N13C-01-193 WCC

Submitted: May 7, 2014

Decided: June 11, 2014

On Defendant's Motion to Dismiss – GRANTED

OPINION

Lynn A. Kelly, Esquire. State of Delaware, Department of Justice, Carvel State Building, 820 N. French Street, 6th Floor, Wilmington, DE 19801. Attorney for Plaintiff.

Joel H. Fredricks, Esquire. Casarino Christman Shalk Ransom & Doss, P.A., 405 North King Street, Suite 300, Wilmington, DE 19899. Attorney for Defendant.

CARPENTER, J.

Plaintiff, State of Delaware Insurance Coverage Office (hereinafter “State ICO” or “Plaintiff”) is a state agency responsible for administering the State’s self-insurance program for vehicles owned by the State. On or about August 12, 2010, a state employee was involved in an accident with Defendant while operating a state-owned vehicle. The state employee suffered injuries, which were compensated for by the State ICO, in accordance with the State’s self-insurance program, in the amount of \$20,965.14. The State ICO now seeks reimbursement from Defendant whose negligence, they allege, caused the employee’s injuries.

The underlying Complaint was filed on January 24, 2013. Defendant answered the Complaint on March 19, 2013, asserting a number of defenses. After some discovery was conducted, Defendant filed the instant Motion to Dismiss for lack of subject-matter jurisdiction or, alternatively, for failure to comply with the statute of limitations.¹ This Court held argument on Defendant’s Motion on May 7, 2014. This is the Court’s opinion on Defendant’s Motion to Dismiss.

STANDARD OF REVIEW

Defendant seeks to dismiss the Complaint for lack of subject matter jurisdiction or, alternatively, for failure to comply with the statute of limitations. Under Delaware Superior Court Civil Rule 12(b)(1), the Court may dismiss a

¹ Defendant also filed a Motion to Amend the answer, to include an affirmative defense of failure to comply with the statute of limitations, which was unopposed and granted by this Court on May 7, 2014.

plaintiff's claim for "[l]ack of jurisdiction over the subject matter."² Further, under Delaware Superior Court Civil Rule 12(b)(1), the Court may dismiss a plaintiff's claim for "failure to state a claim upon which relief can be granted."³ In doing so, the Court "must assume all well-pleaded facts in the complaint to be true"⁴ and draw "all reasonable inferences in favor of the non-movant."⁵ A well-pleaded complaint "need only give general notice of the claim asserted."⁶ Therefore, the motion will be denied "if the plaintiff may recover under any conceivable set of circumstances susceptible to proof under the complaint."⁷

DISCUSSION

Plaintiff's claim arises out of its payment of insurance benefits to their insured employee. Delaware law provides for mandatory arbitration of claims arising from payment of certain insurance benefits under the State's mandatory insurance scheme. Specifically, 21 *Del C.* § 2118 (g)(3) provides that certain disputes between insurers as to benefits paid to their insureds, such as the payment here, "shall be arbitrated." This mandate applies to self-insurers.⁸ Moreover, the

² Super. Ct. Civ. R. 12(b)(1).

³ Super. Ct. Civ. R. 12(b)(6).

⁴ *Read v. Carpenter*, 1995 WL 945544, at *1 (Del. Super. June 8, 1995).

⁵ *Rinaldi v. Iomega Corp.*, 1999 WL 1442014, at *2 (Del. Super. Sept 3, 1999).

⁶ *Ramunno v. Cawley*, 705 A.2d 1029, 1034 (Del. 1998).

⁷ *Spence v. Funk*, 396 A.2d 967, 968 (Del. 1978).

⁸ 21 *Del. C.* § 2118 (g)(6) ("Unless specifically excepted by this subsection, this subsection shall also apply to self-insurers.").

statute provides that if the dispute is not resolved after an arbitration proceeding is concluded, “the losing party shall have a right to appeal *de novo* to the Superior Court.”⁹ Neither party disputes that claims falling within 21 *Del. C.* § 2118 are required to first go through arbitration as the statute provides. The issue before the Court is whether Plaintiff, as a state agency, is bound by 21 *Del. C.* § 2118, as a self-insured party or whether it is exempt from such.

This Court was first faced with this question in *State of Delaware Insurance Coverage Office v. Choudry*.¹⁰ In *Choudry*, the court held that under a statutory-construction analysis, the state was not technically a self-insurer. This was because, to define the term self-insurer in 21 *Del. C.* § 2118, the Court needed to look to 21 *Del. C.* § 2904. Looking at Section 2904, the Court reasoned that the state could never qualify under such definition because Section 2901 exempts the state from *all* of Chapter 29, which includes Section 2904. Thus, after closely reading the statutory scheme, the Court found that the state could not technically be a self-insurer and, accordingly, was not required to pursue their claims through arbitration prior to bringing suit.¹¹ However, the case did have a very unique procedural history that the Court surmises probably played into the final decision made by the Court.

⁹ 21 *Del. C.* § 2118 (j)(5).

¹⁰ 2013 WL 3928226 (Del. Super. July 24, 2013).

¹¹ *Id.* at *4.

Here, however, the Court need not conduct an analysis like that in *Choudry* to determine Plaintiff's status, as the record reflects numerous admissions by the State of its self-insurer status. The Complaint here stated that the State ICO administered the State's *self-insurance program* and Delaware Department of Transportation ("DelDOT") participated in the State's *self-insurance program*.¹² The Complaint further states that the sums paid from the State, for which they now seek reimbursement by Defendant, were paid out pursuant to the State's *self-insurance program*.¹³ Also, in the Form 30 Interrogatories filed with the underlying Complaint, Plaintiff, in response to the question about insurance coverage, stated: "Vehicles owned by the State of Delaware may be covered by the State's *self-insurance program* for PIP benefits up to \$25,000.00 per individual."¹⁴ These statements are binding judicial admissions, which the Plaintiff cannot now abandon.

The Court finds that, because the State has averred in their Complaint that they are self-insured and have disbursed sums, which they now seek to have reimbursed, pursuant to such self-insurance program, they cannot invoke *Choudry* to undo such admissions. For the Court to now hold, despite the State's admissions, that Plaintiff is not self-insured would be contrary to the Court's

¹² Compl. At ¶¶ 1, 2.

¹³ *Id.* at ¶ 8.

¹⁴ Pl. Ans. Form 30 Interrog. ¶ 6 (emphasis added).

review on a motion to dismiss: the Court “must assume all well-pleaded facts in the complaint to be true.”¹⁵ Here, the State pleaded, as affirmative factual assertions, that it was self-insured and the State ICO was the entity which administered the self-insurance program. The Court must assume this to be true.

The Court finds *Waters v. United States*¹⁶ instructive in this regard. There, when faced with whether the United States would be considered self-insured, the Delaware Supreme Court stated: “While the United States is not technically ‘self-insured’ under the requirements of 21 *Del. C.* § 2904, the United States is a financially responsible entity that provides its employees with financial security at least equivalent to the insurance contemplated by state law.”¹⁷ Similarly, here, while the State ICO may not technically be self-insured under Section 2904, their judicial admissions of self-insurer status and indications that they function as a financially-responsible entity render them such in this case.

The Court pauses to note that litigation over this issue strains the Court’s view of common sense. The State does not buy insurance policies so the negligence of their drivers or benefits paid under PIP are not covered by a third-party contract. By any rational and reasonable definition, the only conclusion one can make is that the State is self-insured. The State ICO cannot continue to use

¹⁵ *Read v. Carpenter*, 1995 WL 945544, at *1 (Del. Super. June 8, 1995).

¹⁶ 787 A.2d 71 (Del. 2001).

¹⁷ *Id.* at 73.

Section 2118 as both a sword and a shield when they feel it would be to their advantage.¹⁸ Surely, litigation over this issue should stop and a legislative clarification should be undertaken. Until then, the State should simply allow themselves to be treated like all other insurers and proceed to arbitration; an action that causes no harm to them.

CONCLUSION

Accordingly, Plaintiff is bound by its admissions to this Court and will be held to its sworn statements, conferring self-insurer status. As a self-insurer, the State ICO must pursue its claims through the arbitration delineated in Section 2118. Because these claims must first be brought through arbitration, this Court lacks subject-matter jurisdiction over Plaintiff's claims. Therefore, for the aforementioned reasons, Defendant's Motion to Dismiss is hereby **GRANTED**.¹⁹

IT IS SO ORDERED.

/s/ William C. Carpenter, Jr.

Judge William C. Carpenter, Jr.

¹⁸ *Cf. Gov't Empls. Inc. Co. v. Kirkpatrick*, 2011 WL 2570394, at *1, *4 (Del. Com. Pl. June 17, 2011) (noting that "[t]he State has conceded that it is a self-insured entity").

¹⁹ Since the Court has granted the Motion to Dismiss on jurisdictional grounds, it need not address the alternate statute of limitations argument asserted by Defendant.