IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR KENT COUNTY

JAMES B. ADAMS,	)	
	)	C.A. No. K13C-09-013 JTV
Plaintiff,	)	
	)	
v.	)	
	)	
LESTER GRIFFIN,	)	
	)	
Defendant.	)	

Submitted: August 8, 2014
Decided: November 26, 2014

Craig T. Eliassen, Esq., Schmittinger & Rodriguez, Dover, Delaware. Attorney for Plaintiff.

Jennifer D. Smith, Esq., Tybout, Redfearn & Pell, Wilmington, Delaware. Attorney for Defendant.

Upon Consideration of Defendant's
Motion For Summary Judgment
DENIED

VAUGHN, Judge

Adams v. Griffin
C.A. No. K13C-09-013 JTV
November 26, 2014

ORDER

Upon consideration of defendant Lester Griffin's Renewed Motion for Summary Judgment, the plaintiff's opposition, and the record of the case, it appears that:

1. This is a personal injury case brought by James Adams, involving a motor vehicle accident which occurred on June 30, 2010. He alleges that negligence on the part of the defendant was the proximate cause of injuries he received in the accident.

2. On October 23, 2013, the defendant filed a Motion for Summary Judgment contending that the statute of limitations expired prior to the bringing of suit. The motion was denied without prejudice to give the parties an opportunity to conduct discovery. This is the defendant's Renewed Motion for Summary Judgment

3. It is undisputed that the plaintiff's complaint was filed more than two years after the accident. The issue is whether or not the defendant and his insurer have waived the statute of limitations because of the insurer's alleged failure to give the plaintiff notice of the applicable statute of limitations pursuant to 18 *Del. C.* § 3914.[1] It is undisputed that no such notice was given.

4. In support of his Motion for Summary Judgment, the defendant contends

[1] Pursuant to Delaware Code Title 18, Section 3914:

> [a]n insurer shall be required during the pendency of any claim received pursuant to a casualty insurance policy to give prompt and timely written notice to a claimant informing the claimant of the applicable statue of limitations regarding action for his/her damages.

that 18 *Del. C.* § 3914 is inapplicable because the plaintiff failed to give notice of his claim to the defendant's insurer; and that in order for the statue of limitations to be tolled, the plaintiff must demonstrate that the following conditions have been met: (1) there must be notice of the claim to the insurer; (2) the claim must be pursuant to a casualty insurance policy; (3) there must be the pendency of a claim; and (4) the insurer must have failed to give notice of the applicable statue of limitations.[2]

5. The plaintiff contends that under the Supreme Court's holding in *Stop & Shop Companies v. Gonzales*, the legislative intent of 18 *Del. C.* § 3914 is remedial, and the statute is designed to protect claimants from the draconian consequences of a missed limitations period;[3] that the statute should be accorded a broad construction to accommodate the legislative will;[4] that his claim was a pending claim within the meaning of the statute; and that the defendant's insurer was aware of the accident, knew that its insured was at fault, and knew that the plaintiff had suffered both property damage and personal injury.

6. In support of his contentions, the plaintiff points to Exhibit C in the defendant's motion which contains an Automobile Loss Notice provided to the insurer, a Uniform Collision Report which was provided to the insurer, one letter sent to the defendant by the plaintiff's insurer informing him that it was looking to him for reimbursement for property damage and medical bills, and four letters from plaintiff's

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[2] *Dobson v. McKinley*, 2009 WL 891056, at *6 (Del. Super. Mar. 31, 2009).

[3] 619 A.2d 896, 898 (Del. 1993).

[4] *Id.*

insurer to the defendant's insurer requesting reimbursement for PIP medical benefits paid on account of the plaintiff's injuries. The letters, which were sent between August 18, 2010 and March 13, 2012, contain among other things, summaries of the plaintiff's medical treatment and payments made to various healthcare providers. All of the letters were sent within the applicable statute of limitations. The plaintiff argues the information was sufficient to put the defendant on notice of a pending claim, and therefore trigger the protection provided by 18 *Del. C.* § 3914. Because the defendant did not thereafter inform the plaintiff of the applicable statue of limitation period, the plaintiff contends, the statute of limitations was tolled and this motion should be denied.

_____7. The defendant contends that the documents sent to his insured were not proper notice of a pending claim, that the Automobile Loss Notice indicated property damage as a result of the accident, that the Uniform Collision Report does not identify any personal injuries to the plaintiff; that there is no evidence that the plaintiff ever did anything to put the defendant's insurer on notice of a liability claim; that the plaintiff admits that he never called, wrote to, or spoke with the defendant or the defendant's insurer at any time after the accident; and that there is no evidence that the defendant or his insurer had notice of any kind of the plaintiff's alleged bodily injury claim that would have triggered the insurer's obligation under § 3914.

_____8. It also appears that an adjuster for the defendant's insurer placed a telephone call to the plaintiff, and, not getting him, left a message asking that the plaintiff return the call. The plaintiff never returned the call. It also appears that the claim number used with the phone message was the claim number assigned to the

subrogation claim.

_____9. Summary judgment should be granted when there are no genuine issues of material fact and the moving party is entitled to judgment as a matter of law.[5] The moving party bears the burden of establishing the non-existence of material issues of fact.[6] If a motion is properly supported, the burden shifts to the non-moving party to establish the existence of material issues of fact.[7] In considering the motion, the facts must be viewed in the light most favorable to the nonmoving party.[8] Thus, the court must accept all undisputed factual assertions and accept the non-movant's version of any disputed facts.[9] Summary judgment is inappropriate "when the record reasonably indicates that a material fact is in dispute or if it seems desirable to inquire more thoroughly into the facts in order to clarify the application of law to the circumstances."[10]

10. For the purposes of 18 *Del. C.* § 3914, a plaintiff is not required to submit a formal claim to the defendant so long as his actions, as well as the actions of the defendant and the defendant's insurer, taken together, collectively demonstrate

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[5] Super. Ct. Civ. R. 56(c).

[6] *Moore v. Sizemore*, 405 A.2d 679, 680 (Del. 1979).

[7] *Id.* at 681.

[8] *Merrill v. Crothall-American, Inc.*, 606 A.2d 96, 99 (Del. 1992).

[9] *Sztybel v. Walgreen Co.*, 2011 WL 2623930, at *2 (Del. Super. June 29, 2011).

[10] *Mumford & Miller Concrete, Inc. v. New Castle Cnty.*, 2007 WL 404771, at *4 (Del. Super. Jan. 31, 2007).

that the insurance company was aware that at least a provisional claim was pending.[11] Turning to the record, I am satisfied that the defendant's insurer was on notice of a pending personal injury claim against its insured. The fact that the plaintiff's PIP carrier was submitting requests for reimbursement put the defendant's insurer on notice that the PIP carrier considered the defendant to be at fault in the accident. The letters requesting reimbursement specifically mention medical expenses, including precise amounts and itemized enclosures. In my opinion, a finding that the defendant's insurer did not have notice of the plaintiff's claim against the defendant would fail to give due regard to the broad construction to be accorded to the statute.

11. The defendant contends that this case is analogous to *Samoluk v. Basco, Inc.*[12] In that case electronically-controlled doors at the defendant's place of business closed on the plaintiff, causing her to fall. The store manager told the plaintiff that she should see a doctor and that an insurance adjuster may contact her. He also allegedly told her that hers was the third incident involving the electric doors that day. The only information provided to the defendant's insurance company was an accident report which showed no injuries to the plaintiff. There was no evidence the defendant ever received a claim from the plaintiff or anyone on the plaintiff's behalf. Here the defendant's insurer received documents, including requests for reimbursement of

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[11] *See Murphy v. Lucas*, 2006 WL 1173893, at *2 (Del. Super. Apr. 28, 2006) (the court found the insurer was on sufficient notice within the meaning of 18 *Del. C.* § 3914 despite no formal claim where an employee notified his employer of an incident, filed an accident report, and received later correspondence from the insurer).

[12] 1988 WL 40156, at *1 (Del. Super. Apr. 20, 1988).

$4,295 in medical PIP benefits that it had paid out. *Samoluk* is distinguishable on its facts.

12. For the foregoing reasons, the defendant's Motion for Summary Judgment is ***denied***.

IT IS SO ORDERED.

/s/ James T. Vaughn, Jr.

oc: Prothonotary
cc: Order Distribution
File