

**IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY**

LIBERTY MUTUAL	)	
INSURANCE COMPANY,	)	
	)	
Plaintiff,	)	
	)	C.A. No. N10C-10-065 CLS
v.	)	
	)	
CITY WINDOW CLEANING OF	)	
DELAWARE, INC. and JESUS	)	
SILVA-GARCIA,	)	
	)	
Defendants.	)	

Date Submitted: February 24, 2011

Date Decided: May 26, 2011

On Defendants' Motion to Dismiss. **GRANTED.**

ORDER

Kimberly Meany, Esq., 1220 North Market Street, 5th Floor, P.O. Box 8888,
Wilmington, DE 19899. Attorney for Plaintiff.

Anthony G. Flynn, Esq., 1000 West Street, 17th Floor, P.O. Box 391, Wilmington,
DE 19899. William E. Gamgort, Esq., 1000 West Street, 17th Floor, P.O. Box
391, Wilmington, DE 19899. Attorneys for Defendant, City Window Cleaning of
Delaware, Inc.

William X. Moore, Jr., Esq., 910 Gilpin Avenue, Wilmington, DE 19806.
Attorney for Defendant Jesus Silva-Garcia.

Scott, J.

Introduction

Before the Court is the Defendants' motion to dismiss. The Court has reviewed the parties' submissions. For the reasons that follow, the Defendants' Motion to Dismiss is **GRANTED**.

Facts

This dispute arises over an alleged compensable work related accident that occurred on January 15, 2010. On January 15, 2010, Jesus Silva-Garcia ("Silva-Garcia") was allegedly injured while working for City Window Cleaning of Delaware, Inc. ("CWC") (collectively "Defendants"). As a result of the accident, part of Silva-Garcia's left leg was amputated.

Liberty Mutual Insurance Company ("LM") had been the workers' compensation insurance carrier for CWC since 2005. The parties agree LM provided coverage for the period January 1, 2009 through January 1, 2010. Although the renewal premium deposit was due on or before January 1, 2010, CWC contends it mailed the premium on either January 13, 2010, or January 14, 2010. The check was dated January 12, 2010. LM contends the insurance policy was not renewed until the payment was processed on January 20, 2010.

On or about September 9, 2010, CWC requested an evidentiary hearing before the Industrial Accident Board ("IAB") to determine whether the LM policy was renewed prior to January 15, 2010, the date of Silva-Garcia's alleged accident.

On October 8, 2010, LM filed this declaratory action to determine whether coverage existed on the date of the alleged accident.

On October 15, 2010, the IAB held the evidentiary hearing to determine coverage. At the hearing LM argued the IAB lacked jurisdiction to determine the coverage issue as the declaratory action filed in this Court prevented its litigation before the IAB.

CWC and Silva-Garcia move to dismiss this action pursuant to Super. Ct. Civ. R. 12(b)(1).

Discussion

Declaratory Judgment Act

LM has an adequate remedy before the IAB so the declaratory action is dismissed. An action for declaratory relief is appropriate when no other remedy exists.¹ A declaratory judgment is an action “to declare rights, status and other legal relations whether or not further relief is or could be claimed.”² A court has the discretion on whether or not to entertain an action for declaratory judgment.³ However, when another adequate remedy exists, the declaratory action will be dismissed.⁴

¹ *Hampson v. State ex rel. Buckson*, 233 A.2d 155, 156 (Del. 1967).

² 10 Del. C. § 6501.

³ *Id.* (citing *Mullendore v. Sch. D. No. 1 of Lancaster Cty*, 388 N.W.2d 93, 98 (1986); *National Health Fed. v. Weinberger*, 518 F.2d 711 (7th Cir. 1975)).

⁴ *Hampson v. State ex rel. Buckson*, 233 A.2d 155, 156 (Del. 1967).

The IAB has jurisdiction over matters pertaining to the Workers' Compensation Act.⁵ The issue before the IAB was whether CWC had the workers' compensation insurance it was required to have under 19 *Del. C.* § 2372. As the administrative body charged with handling workers' compensation matters, the IAB is the most appropriate entity to resolve the dispute.

The Doctrine of Primary Administrative Jurisdiction

Primary administrative jurisdiction applies when a claim, while cognizable in a court of law, requires the specialized knowledge of the administrative board possessing that knowledge.⁶ As previously stated, the IAB is to determine whether CWC had the required workers' compensation insurance under 19 *Del. C.* § 2372. Similarly, the issue before the Court is whether the workers' compensation insurance policy was in effect on January 15, 2010. To determine the issue, the policies of the Delaware Workers Compensation Handbook will be reviewed to determine compliance with the Delaware Workers Compensation Insurance Plan. As the administrative agency empowered with the specialized expertise in handling workers' compensation issues, the IAB is most equipped to make the decision.⁷

⁵ 19 *Del. C.* § 2301A.

⁶ *E. Shore Natural Gas Co. v. Stauffer Chem. Co.*, 298 A.2d 322, 325 (Del. 1972) (citations omitted).

⁷ 19 *Del. C.* § 2301A.

The doctrine of primary administrative jurisdiction will permit the stay of a judicial proceeding until the issues before the administrative agency are decided.⁸ Here, the only issue presented is the same as that presented to the IAB; whether CWC had workers' compensation insurance coverage on January 15, 2010. Having nothing left to decide, this action is dismissed.

The Doctrine of Exhaustion of Administrative Remedies

Since both the IAB and this Court are competent to determine when the policy became effective, the doctrine of exhaustion of administrative remedies does not apply. “[W]here a remedy before an administrative agency is provided, relief must be sought by exhausting this remedy before the courts will either review any action by the agency or provide an independent remedy.”⁹ The administrative remedy must be exclusive and substantially similar to the one sought in this Court.¹⁰ In this declaratory judgment action, LM seeks to have the Court declare it complied with the Delaware Workers Compensation Insurance Plan, CWC was not covered by insurance from January 1, 2010 through January 19, 2010, and conclude LM does not have a coverage obligation to CWC for the underlying incident.¹¹ One of the issues before the IAB includes the date the

⁸ *Levinson v. Delaware Comp. Rating Bureau, Inc.*, 616 A.2d 1182, 1187 (Del. 1992) (citing *Webb v. Diamond State Telephone Co.*, 237 A.2d 143, 145 (Del. Ch. 1967)).

⁹ *Levinson v. Delaware Comp. Rating Bureau, Inc.*, 616 A.2d 1182, 1187 (Del. 1992) (citations omitted).

¹⁰ *Scarborough v. Mayor & Council of Town of Cheswold*, 303 A.2d 701, 704 (Del. Ch. 1973).

¹¹ See Complaint.

insurance policy became effective. Since this Court and the IAB have concurrent jurisdiction to determine the effective date of the insurance policy, the doctrine of exhaustion of remedies cannot apply.

Conclusion

Based on the forgoing, the Defendants' motion to dismiss is **GRANTED**.

IT IS SO ORDERED.

/S/CALVIN L. SCOTT
Judge Calvin L. Scott, Jr.