IN THE COURT OF COMMON PLEAS FOR THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY

RABRINDA CHOUDRY, and	)	
DEBJANI CHOUDRY,	)	
	)	
Defendants Below/Appellants,	)	
	)	
v.	)	**C.A. No. CPU4-12-000076**
	)	
STATE OF DELAWARE INSURANCE	)	
COVERAGE OFFICE,	)	
	)	
Plaintiff Below/Appellee.	)	

Submitted: June 29, 2012
Decided: August 1, 2012

On Defendants' Motion to Dismiss
GRANTED

MEMORANDUM OPINION AND ORDER

Marc P. Niedzielski, Esquire, Wilmington, Delaware, Attorney for Plaintiff

Joel H. Fredricks, Esquire, Wilmington, Delaware, Attorney for Defendants

ROCANELLI, J.

On August 14, 2009, Delaware State Police Trooper Michael Cahall was involved in a car accident at the intersection of Route 4 and Marrows Road in New Castle County, Delaware. At the time of the accident, Trooper Cahall was operating a marked Delaware State Police cruiser. The second vehicle involved in the accident was operated by Rabrinda Choudry or Debjani Choudry, and one or both of these persons owns that vehicle.[1]

[1] The record evidence presented to the Court is inconsistent regarding which of the Choudreys owns the car and which of them was operating the car. For this purposes of this decision, it is not necessary for the Court to make a determination. It is sufficient for consideration of the issues currently before the Court that both individuals are parties to this lawsuit.

Both vehicles were damaged in the collision. The Delaware State Police was insured by the State of Delaware Insurance Coverage Office ("Delaware Insurance Coverage Office"). The Choudreys were insured by State Farm. The Delaware Insurance Coverage Office paid benefits to compensate the Delaware State Police for damage caused in the accident. State Farm paid benefits to the Choudreys to compensate them for damage caused in the accident.

On July 26, 2010, the Delaware Insurance Coverage Office filed a request for automobile arbitration with the State of Delaware Department of Insurance.[2] Arbitration was held on September 16, 2010.[3] On September 23, 2010, the arbitration panel denied the claims of the Delaware Insurance Coverage Office related to the August 14, 2009 accident with the Choudreys.[4]

On October 13, 2010, the Delaware Insurance Coverage Office filed a notice of appeal and complaint on appeal in the Superior Court, seeking review *de novo* of the September 23, 2010 decision of the arbitration panel.[5] The Delaware Insurance Coverage Office made the following factual allegations in the Superior Court appeal from the arbitration decision:

> 1. Plaintiff…is a state agency organized under the laws of the State of Delaware responsible for administering the State's self-insurance program for vehicles owned by the State of Delaware.
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> 2. At all times pertinent hereto, the [Delaware State Police] was qualified as an insured of appellant State ICO under the State's self-insurance program.

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[2] Defendants' Exhibit A.

[3] *Id.*

[4] *Id.*

[5] Defendants' Exhibits A and B.

> 3. At all times pertinent hereto, Ramyendra N. Choudry [sic] was covered under an insurance policy issued by appellee State Farm Mutual Automobile Insurance Company.
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> …
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> 6. On or about November 16, 2009, the State ICO paid $3,102.52 to repair the [Delaware State Police] vehicle on behalf of its insured.
>
> 7. Per the terms of 21 *Del. C.* § 2118(g), the above-referenced self-insurance program, and/or the common law of the State of Delaware, appellant State ICO is subrogated to the rights of its insured the [Delaware State Police] arising from the above-referenced motor vehicle collision, and is therefore entitled to recover from appellee State Farm for the payments made on behalf of its insured the [Delaware State Police], i.e. $3,102.52.[6]

On April 13, 2011, the Delaware Insurance Coverage Office and the Choudreys filed a joint stipulation of dismissal of the Superior Court action without prejudice.[7]

On June 6, 2011, the Delaware Insurance Coverage Office filed a complaint against the Choudreys in the Justice of the Peace Court. In the JP Court Complaint, the Delaware Insurance Coverage Office alleged that it suffered damages in the amount of $3,102.52 as the result of the Choudreys' negligence in the August 14, 2009 motor vehicle collision with Trooper Cahall.

On June 16, 2011, the Choudreys filed an answer in JP Court, denying the averments in the complaint and asserting a counterclaim for negligence. On December 13, 2011, the Justice of the Peace Court entered judgment in favor of the Delaware Insurance Coverage Office and against the Choudreys on the complaint and counterclaim.

On December 21, 2011, the Choudreys filed a notice of appeal in this Court from the December 13, 2011 judgment of the Justice of the Peace Court. On March 9, 2012, the Delaware Insurance Coverage Office filed a complaint on appeal. In this complaint, the Delaware Insurance Coverage Office alleged that it suffered injuries as a result of the Choudreys'

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[6] Defendants' Exhibit B.

[7] Defendants' Exhibit C.

negligence in the August 14, 2009 collision, because it paid the Delaware State Police, its' "insured," $3,102.52 for property damage that occurred in the accident.

On March 22, 2012, the Choudreys filed an answer, admitting that the accident took place, but denying negligence, and setting forth several affirmative defenses, including the statement that: "Plaintiff is statutorily prohibited from asserting direct claims against the individual defendants pursuant to 21 *Del. C.* § 2118 and Delaware law." The Choudreys also asserted in a counterclaim that the Delaware State Police was negligent with respect to the accident.

The Choudreys filed a motion to dismiss for lack of subject matter jurisdiction pursuant to Court of Common Pleas Civil Rule 12(b)(1) and 21 *Del. C.* § 2118(g). After the Delaware Insurance Coverage Office filed a response, the Court heard oral argument. This is the Court's decision on the Choudreys' motion to dismiss.

Parties' Contentions

The Choudreys argue that this Court lacks subject matter jurisdiction over this dispute. According to the Choudreys, the only avenue to appeal the decision of the arbitration panel is appeal *de novo* in Superior Court. The Choudreys rely upon the statutory provisions of 21 *Del. C.* § 2118(g) and (j) which require that claims seeking monetary damages for property damage between self-insured entities and insurance companies be submitted to mandatory arbitration, and that appeals are limited to the those filed in the Superior Court.

The Delaware Insurance Coverage Office opposed the motion to dismiss. According to the State, (i) the provisions of 21 *Del. C.* § 2118(g) do not apply to the State because this is not a subrogation action; (ii) 21 *Del. C.* § 2118(g) does not apply to the State pursuant to the Financial Responsibility Act, 21 *Del. C.* § 2901; and (iii) pursuant to 18 *Del. C.* § 6540, disputes between

Delaware Insurance Coverage Office and private automobile insurance companies may be litigated in any court in the State of Delaware.

Discussion

Delaware mandates certain insurance coverage for motor vehicles. The relevant statute is 21 *Del. C.* § 2118(a) which provides:

> No owner of a motor vehicle required to be registered in this State, other than a self-insurer pursuant to § 2904 of this title, shall operate or authorize any other person to operate such vehicle unless the owner has insurance on such motor vehicle providing the following minimum insurance coverage: (1) Indemnity from legal liability for bodily injury, death or property damage arising out of ownership, maintenance or use of the vehicle to the limit, exclusive of interest and costs, of at least the limits prescribed by the Financial Responsibility Law of this State; (2) Compensation to injured persons for reasonable and necessary expenses incurred within 2 years from the date of the accident… (3) Compensation for damage to property arising as a result of an accident involving the motor vehicle… (4) Compensation for damage to the insured motor vehicle…

Delaware also provides for mandatory arbitration of claims arising from payment of certain insurance benefits paid under the mandatory insurance scheme. Specifically, 21 *Del. C.* § 2118(g)(3) provides that disputes between insurers as to benefits paid to their insureds pursuant to subparts (a)(1) through (4) "shall be arbitrated." This mandate applies to self-insurers: "Unless specifically excepted by this subsection, this subsection shall also apply to self-insurers."[8] Moreover, the statute provides how the dispute shall proceed after an arbitration proceeding is concluded. Specifically, "the losing party shall have a right to appeal *de novo* to the Superior Court" the decision of the arbitration panel.[9]

The legislative intent of this statutory scheme is to impose on insurance carriers the "ultimate liability" for their insured parties' medical bills and property damage to the extent of

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[8] 21 *Del. C.* § 2118(g)(6).

[9] 21 *Del. C.* § 2118(j)(5).

the insurance policies while limiting the costs and delay associated with litigation of those claims.[10] "The purpose of section 2118 is to allow persons injured in automobile accidents to receive from their own carriers 'the economic benefit of immediate payment without awaiting protracted litigation.'"[11] Stated differently, the statutory scheme set forth in 21 *Del. C.* § 2118 reflects a legislative intent to create incentives for the purchase of motor vehicle liability insurance by requiring that injured insured parties are promptly compensated for their injuries by their insurers who may then resolve disputes as between insurers. Those insurers are required to proceed first to arbitration and then, if the parties seek review of the arbitration decision, an appeal may be filed in Superior Court.

Accordingly, in *State Farm Mut. Auto. Ins. Co. v. U.P.S.*, [12] State Farm submitted a subrogation claim to Arbitration Forums, Inc. ("Arbitration Forums"), as required by 21 *Del. C.* § 2118(g)(3). Arbitration Forums determined that it lacked jurisdiction over the claim based on its' internal rules which provided that the claim should have been filed for arbitration before the Insurance Commissioner.[13] Instead of submitting the claim to arbitration before the Insurance Commissioner, State Farm filed a complaint against U.P.S. in Superior Court.[14] The Superior Court dismissed the complaint for lack of subject matter jurisdiction, finding that 21 *Del. C.* § 2118(g)(3) requires that disputes between insurers as to benefits paid to their insureds pursuant to

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[10] *Nat. Union Fire Ins. Co. of Pittsburgh v. Fisher*, 692 A.2d 892, 896 (Del. 1997) (quoting *Int'l Underwriters, Inc. v. Blue Cross & Blue Shield of Del., Inc.*, 449 A.2d 197, 200 (Del. 1982).

[11] *Id.* (quoting *Crum & Forster Ins. Group v. Wright*, 634 A.2d 373, 376 (Del. 1993)).

[12] 2012 WL 1495338, at *1 (Del. Super.).

[13] *State Farm*, 2012 WL 1495338, at *1.

[14] *Id.*

subparts (a)(1) through (4) be submitted to arbitration, with the right to appeal the decision of the arbitration panel to Superior Court.[15] The court acknowledged that the Arbitration Forum's ability to dismiss actions for noncompliance with internal arbitration panel rules had in effect created the "unfortunate dilemma" that prompted State Farm to file its claim directly in Superior Court, and that the effect of dismissing the claim would be to leave State Farm without legal recourse in Delaware.[16] However, the court opined that the proper remedy to this problem was "systemic modification," rather than the court exercising jurisdiction contrary to the plain language of the statute.[17]

The Delaware Supreme Court has similarly interpreted the mandatory insurance statute. In *Waters v. United States*, the Court held that a private insurer had the right to file a subrogation claim against the United States to recover benefits paid to its insured, where the United States was a self-insured entity.[18] Also, in *Moore v. State*, the Court overturned a restitution award to a

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[15] *Id.* at *3. The Court notes that the recent Superior Court decision in *State of Delaware Ins. Coverage v. Lego*, C.A. No. N09C-08-084 CLS (Del. Super. May 7, 2010) appears to stand for the contrary position that (1) claimants in actions for reimbursement filed under 21 *Del. C.* § 2118(g) may skip mandatory arbitration and file their claims directly in Superior Court; and (2) that the claim, if incorrectly filed against the insured party instead of their insurer, may be amended to add the insurer as a co-defendant. Therefore, this decision could arguably be cited for the proposition that Delaware Insurance Coverage Office, in this case, could have skipped arbitration and filed its claim directly in Superior Court. To the extent that *Lego* stands for that proposition, this Court finds there is a split of authority in Superior Court with respect to the holdings in *Lego* and in *State Farm Mut. Auto. Ins. Co. v. U.P.S.*, 2012 WL 1495338 at *3. Confronted with this split in Superior Court authority and this Court's reading of 21 *Del. C.* § 2118(g), this Court finds that the holding in *State Farm* is controlling because the issues were specifically addressed by the parties in *State Farm*, whereas in *Lego* it seems these same issues were not identified by the parties for the Court's consideration.

[16] *Id.* (quoting *Zurich Am. Ins. Co. v. St. Paul Surplus Lines, Inc.*, 2009 WL 4895120, at *2-3 (Del. Ch.)).

[17] *Id.*

[18] 787 A.2d 71, 73-74 (Del. 2001).

victim's insurer that was granted to compensate the insurance company for benefits already paid to the victim under an insurance policy.[19] The Court ruled that the plaintiff insurance company should have pursued a subrogation claim against the defendant's insurance company to recover the benefits paid as required by 21 *Del. C.* § 2118(g), rather than seek compensation in criminal restitution.[20]

Based on the statutory scheme adopted by the legislature and set forth in 21 *Del. C.* § 2118(g) and the decisional law, the Court finds that it lacks subject matter jurisdiction over this dispute. This dispute could only be pursued first in arbitration and upon appeal in Superior Court. Neither the Justice of the Peace Court nor the Court of Common Pleas has jurisdiction.

The Court specifically rejects the arguments presented by the Delaware Insurance Coverage Office, as follows:

First, Delaware Insurance Coverage Office argues that it is not subject to the mandatory procedures of 21 *Del. C.* § 2118(g) and (j) because its claim is not a subrogation claim, but rather a direct action. This argument is posited on an assertion that, when the Delaware Insurance Coverage Office paid property damage benefits to its insured, the Delaware State Police, the State of Delaware was, in effect, paying benefits to itself, the State of Delaware. To accept such a contention would be contrary to the legislative intent of the mandatory insurance scheme in 21 *Del. C.* § 2118 which specifically provides that the statute applies to self insurers, and does not except the State when it acts as a self-insured entity.[21]

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[19] 15 A.3d 1240, 1245 n.14 (Del. 2011).

[20] *Id.*

[21] 21 *Del. C.* § 2118(g)(6).

The clear intent of this statute is to create incentives for minimum automobile insurance by requiring quick payment to insured parties, but also by providing the insurers with an efficient forum in which to litigate disputes over the benefits paid – arbitration.[22] It is not disputed that if the State chose to obtain private insurance instead of self-insurance, the private insurer would be required to submit this claim to arbitration. Similarly, private insurance companies and non-State self-insured entities are required to arbitrate disputes over benefits paid when they assert subrogation claims against the State acting as a self-insurer.[23]

Second, the Delaware Insurance Coverage Office argues that 21 *Del. C.* § 2901[24] specifically exempts State-owned vehicles from the provisions of 21 *Del. C.* § 2118(g) because "section 2118 was [enacted] to enforce the requirements of the Financial Responsibility Law, it follows that an entity exempted from its provisions is exempted from coverage under section 2118." The Court disagrees. Notwithstanding the statutory language of 21 *Del. C.* § 2901, private insurance companies and non-State self insured entities are required to submit disputes over benefits paid when they assert subrogation claims against the State acting as a self-insurer.[25] The State is subject to this statutory scheme whether it is the subrogee or the subrogor.

Third, the Delaware Insurance Coverage Office argues that 18 *Del. C.* § 6540 governs all disputes involving the Delaware Insurance Coverage Office and further provides that the

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[22] *Nat. Union Fire Ins. Co. of Pittsburgh*, 692 A.2d 892 at 896.

[23] *Waters*, 787 A.2d at 73-74.

[24] 21 *Del. C.* § 2901 provides that "[t]his chapter shall not apply with respect to any motor vehicle owned by…this State or any political subdivision of this State[.]"

[25] *Waters*, 787 A.2d at 73-74. In a prior decision, this Court rejected the argument made by the Delaware Insurance Coverage Office that the State was immune from subrogation liability. *GEICO v. Kirkpatrick*, 2011 WL 2570394, at *1-4 (Del. Com. Pl.).

Delaware Insurance Coverage Office was not required to submit its claim in this case to arbitration. The Court rejects the argument that 18 *Del. C.* § 6540 overrides the dispute resolution procedures set forth in 21 *Del. C.* § 2118. To allow the State to file claims in any court in the State of Delaware would militate against the policy underlying 21 *Del. C.* § 2118 of providing insurers with an efficient forum in which to resolve disputes addressed to the benefits already paid.[26] This result would be directly contrary to the decisional law, including the Delaware Supreme Court's analysis in *Waters*.[27]

Accordingly, this Court lacks the requisite subject matter jurisdiction to decide this dispute and Defendants' motion to dismiss must be granted. Based on this analysis, the Court finds that the Justice of the Peace Court similarly lacked subject matter jurisdiction. Therefore, the December 13, 2011 judgment entered by the Justice of the Peace Court in the matter below must be vacated.

Finally, the Court notes that, unlike in *State Farm Mut. Auto. Ins. Co. v. U.P.S.*, this ruling does not leave the Delaware Insurance Coverage Office without a remedy. This matter was originally submitted to arbitration as required by 21 *Del. C.* § 2118(g). Defendants prevailed at arbitration, and Plaintiff filed an appeal to Superior Court. On April 13, 2011, Plaintiff and Defendant filed a joint stipulation of dismissal of the appeal in Superior Court, *without prejudice*.[28] Therefore, Plaintiff may pursue its claim in Superior Court.

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[26] *Nat. Union Fire Ins. Co. of Pittsburgh*, 692 A.2d 892 at 896.

[27] *Waters*, 787 A.2d at 73-74.

[28] Defendants' Exhibit C.

ORDER

AND NOW, THEREFORE, IT IS HEREBY ORDERED this 1st day of August, 2012:

1. The motion to dismiss the appeal for lack of subject matter jurisdiction pursuant to Court of Common Pleas Civil Rule 12(b)(1) is hereby GRANTED; and

2. The December 13, 2011 judgment of the Justice of the Peace Court entered in JP13-11-007599 is hereby VACATED.

Andrea L. Rocanelli

The Honorable Andrea L. Rocanelli