SUPERIOR COURT
OF THE
STATE OF DELAWARE

RICHARD R. COOCH
RESIDENT JUDGE

NEW CASTLE COUNTY COURTHOUSE
500 North King Street, Suite 10400
Wilmington, Delaware 19801-3733
(302) 255-0664

Sandra F. Clark, Esquire
Law Office of Dawn L. Becker
919 Market Street, Suite 460
Wilmington, Delaware 19801
Attorney for Plaintiff

Sherry R. Fallon, Esquire
Tybout, Redfearn & Pell
750 Shipyard Drive # 400
P.O. Box 2092
Wilmington, Delaware 19899-2092
Attorney for Defendant

Re: Government Employees Insurance Company @1156317, a foreign corporation v. State Farm Mutual Automobile Insurance Company
C.A. No. 09C-08-042 RRC

Submitted: August 16, 2010
Decided: August 27, 2010

Upon Defendant's Motion for Summary Judgment.
GRANTED.

Dear Counsel:

INTRODUCTION

This motion for summary judgment arises from an alleged overpayment by Government Employees Insurance Company ("GEICO") to State Farm Mutual Automobile Insurance Company ("State Farm") made pursuant to intercompany arbitration. In 2007, State Farm filed a valid PIP subrogation claim against GEICO

in intercompany arbitration pursuant to 21 *Del. C.* § 2118(g)(3).[1] The subrogation action was for PIP benefits that State Farm had made to its insured as a result of a motor vehicle accident that took place on November 5, 2004.[2] GEICO did not seek a deferment of the arbitration as it had a right to do pursuant to the applicable arbitration rules, which stated in pertinent part:

> In the Automobile, Property, and Special Forums, deferment requests by the filing company will be automatically granted.[3]

State Farm ultimately was awarded $12,959 at the arbitration.[4] At the time of the arbitration, GEICO did not know that there was a direct claim for bodily injury pending against the tortfeasor.

After the arbitration award became final and GEICO paid State Farm the full amount of the award, GEICO entered into a bodily injury settlement with the injured claimant for $20,000.[5] The policy limit of the GEICO insurance policy was $25,000.[6] After the bodily injury settlement, and more than fifteen months after the arbitration award had become final, GEICO demanded reimbursement from State Farm in the amount of $7,959, representing the amount of overpayment above the $25,000 policy limit.[7]

The issue presented by this motion for summary judgment is whether this Court must award GEICO $7,959, representing the amount of overpayment above the $25,000 policy limit, pursuant to 21 *Del. C.* § 2118(g)(5), which states that "any insurer who has been paid its subrogated claim shall reimburse the tortfeasor's liability insurer that portion of the claim exceeding the maximum amount of the tortfeasor's liability insurance coverage available for the injured party."

This issue presents a novel issue of law. This Court holds that State Farm is not required to reimburse GEICO for the amount of overpayment. Although the statute does appear to require "reimburse[ment]" whenever there is an overpayment, such an interpretation would undermine the finality of intercompany arbitration awards and could create a new method to overturn valid and otherwise final arbitration awards.

---

[1] Op. Br. ¶ 3.
[2] *Id*.
[3] *Id*. Ex. A (These are the rules for Arbitration Forums, Inc.).
[4] *Id*. at ¶ 4.
[5] *Id*. at ¶ 7.
[6] *Id*.
[7] *Id*.

Alternatively, this Court holds that the particular facts of this case should preclude recovery because GEICO knew or should have known of a pending bodily injury claim. [8] GEICO had the opportunity to request a deferment of intercompany arbitration, but failed to do so. This Court views the reason for overpayment in this case as a unilateral mistake by GEICO not warranting relief. Accordingly, Defendant's motion for summary judgment is **GRANTED**.

FACTS

The facts are not in dispute. In 2007, State Farm filed a subrogation claim against GEICO in intercompany arbitration pursuant to 21 *Del. C.* § 2118(g)(3).[9] The subrogation action was for PIP benefits that State Farm had made to its insured as a result of an accident that took place in 2004.[10] GEICO never requested deferment of arbitration, and, as a result of the arbitration, State Farm was awarded $12,959.[11]

After GEICO paid State Farm the full $12,959, GEICO entered into a bodily injury settlement with the injured claimant for $20,000.[12] The policy limit of the GEICO insurance policy was $25,000.[13] After the bodily injury settlement, and more than fifteen months after the arbitration award had become final, GEICO demanded reimbursement from State Farm in the amount of $7,959, representing the amount of overpayment above the $25,000 policy limit.[14] This demand was made pursuant to 21 *Del. C.* § 2118(g)(5), which states:

> Nothing contained herein shall prohibit a liability insurer from paying the subrogated claim of another insurer prior to the settlement or resolution of the injured party's claim. However, should the amount of such settlement or resolution, in addition to the amount of any subrogated claim, exceed the maximum amount for the tortfeasor's liability insurance coverage available for the injured party, then any insurer who has been paid its subrogated claim shall reimburse the tortfeasor's liability insurer that portion of the claim exceeding the maximum amount of the tortfeasor's liability insurance coverage available for the injured party.

---

[8] The accident occurred in 2004. The arbitration took place in 2007. The statute of limitations for a negligence action is two years. 10 *Del. C.* § 8119.
[9] Op. Br. ¶ 3.
[10] *Id.*
[11] *Id.* at ¶ 4.
[12] *Id.* at ¶ 7.
[13] *Id.*
[14] *Id.*

Although this action was originally brought in the Court of Common Pleas, this Court obtained jurisdiction when State Farm requested a jury trial.

PARTIES' CONTENTIONS

State Farm has filed a motion for summary judgment arguing "[t]he [c]omplaint fails to state a cause of action against State Farm."[15] State Farm contends that 21 *Del. C.* § 2118(g)(3) does not create a cause of action for reimbursement.[16] State Farm also asserts that GEICO should have sought a deferment of arbitration and "placed no conditions on satisfaction of a valid and binding [arbitration] award[.]"[17] State Farm asserts that GEICO must bear the consequences of its "unilateral mistake" involving coverage and argues that GEICO's cause of action essentially requests that this Court vacate a binding arbitration award.[18]

In response, GEICO argues that the language of the statute is "clear."[19] GEICO asserts that the statute does not require that a deferment be requested prior to arbitration, and "[n]o where in the statute are any limitations or procedures that must be followed in order to qualify for a reimbursement[.]"[20] GEICO also argues that it did not make a "mistake" and acted in "reasonable reliance" on the "plain meaning of 21 *Del. C.* § 2118(g)(5) to recoup its funds from [State Farm]."[21]

DISCUSSION

In a motion for summary judgment, the moving party bears the burden of proving "no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law."[22] Summary judgment is only appropriate when, after viewing all the evidence in a light most favorable to the nonmoving party, the Court finds no genuine issue of material fact.[23]

The issue presented by this motion for summary judgment is whether this Court must order State Farm to reimburse GEICO $7,959, representing the amount of overpayment above the $25,000 policy limit, pursuant to 21 *Del. C.* §

---

[15] *Id*. at ¶ 2.
[16] *Id*. at ¶ 3.
[17] *Id*. at ¶ 7.
[18] *Id*. at ¶ 10, 14.
[19] Ans. Br. ¶ 6.
[20] *Id*.
[21] *Id*. at ¶ 8.
[22] Sup. Ct. Civ. R. 56(e); *see also Moore v. Sizemore*, 405 A.2d 679, 680 (Del. 1979).
[23] *Gill v. Nationwide Mut. Ins. Co.*, 1994 WL 150902, at * 2 (Del. Super.).

2118(g)(5), which states that "any insurer who has been paid its subrogated claim shall reimburse the tortfeasor's liability insurer that portion of the claim exceeding the maximum amount of the tortfeasor's liability insurance coverage available for the injured party."

This issue appears to present an issue of first impression. However, by analogy, other cases have commented on an insurer's failure to seek timely reimbursement.

For example, in *Aetna Casualty and Surety Company v. LaFazia*, the Court of Chancery held that a settlement agreement in a personal injury case was valid even though it was based on unilateral mistake.[24] In *LaFazia*, Aetna mistakenly believed that the liability insurance coverage available to its insured was over $25,000.[25] Accordingly, Aetna agreed to a settlement in the amount of $25,000. It was later discovered that the policy limit was $15,000.[26] The Court of Chancery refused to rescind the settlement agreement reasoning that "the entire situation could have been avoided by the exercise of ordinary case on the part of Aetna in making certain of its policy limits before agreeing to a settlement and tendering payment."[27]

Additionally, in *M3 Healthcare Solutions v. Family Practice Associates, P.A.*, the Delaware Supreme Court affirmed the Court of Chancery's decision to deny a modification of an arbitration agreement.[28] The Delaware Supreme Court stated that 10 *Del. C.* § 5714(a)(4) provides the appropriate method to vacate an arbitration award.[29] Pursuant to 10 *Del. C.* § 5714(a)(4):

> [A] court must vacate an arbitration award if the arbitrator: (1) "refused to postpone the hearing upon sufficient cause being shown therefor;" (2) "refused to hear evidence material to the controversy;" (3) "otherwise conducted the hearing contrary to the provisions of § 5706;" or (4) "failed to follow the procedures set forth in this chapter, so as to prejudice substantially the rights of a party, unless the party applying to vacate the award continued with the arbitration with notice of the defect."[30]

---

[24] *Aetna Cas. & Sur. Co. v. LaFazia*, 1982 WL 117015 (Del. Ch.).
[25] *Id*. at *1.
[26] *Id*. at * 2.
[27] *Id*. at * 4.
[28] *M3 Healthcare Solutions v. Family Practice Assoc, P.A.*, 996 A.2d 1279 (Del. 2010).
[29] *Id*. at 1284.
[30] *Id*.

The Supreme Court found significant the fact that the plaintiff never sought to adjourn the arbitration, and failed to request postponement.[31] Accordingly, the Supreme Court refused to modify the arbitration award.

Here, the Court must assess the remedy that GEICO seeks and determine whether 21 *Del. C.* § 2118(g)(5) creates such a remedy. Although the complaint asserts that this is an action for "reimbursement," this Court views this action in effect a request to modify the arbitration award. The arbitrator awarded State Farm $12,959. Now, GEICO asks this Court to reduce the amount of that arbitration award to $7,959.

Although GEICO correctly states that the statute provides for reimbursement in the event of an overpayment, any requirement of reimbursement cannot continue indefinitely. Requiring reimbursement at any time after an intercompany arbitration would undermine the importance of the finality of intercompany arbitration awards.

GEICO cites the synopsis of 21 *Del. C.* § 2118 as support for its position that the General Assembly sought to ensure that an insurer was entitled only to the amount of proceeds remaining after the injured individual has been compensated. The synopsis states in pertinent part:

> The Committee believes this bill solves the "primary" problem by assuring that insurance companies enforcing subrogation rights . . . will only be entitled to those insurance proceeds remaining after the injured individual has been paid first from those insurance proceeds.

Despite GEICO's argument to the contrary, this Court views the synopsis as providing support for the fact that an injured party should be paid first.[32] GEICO did not do this in the present case because, at the time of the arbitration, GEICO apparently did not know the injured party had a pending bodily injury claim.

Alternatively, this Court holds that GEICO still cannot recover under the particular facts of this case. GEICO did not seek to "defer" the arbitration hearing even though GEICO knew or should have known of a pending claim for bodily injury. To the extent that GEICO did not know of such a claim, this Court views

---

[31] *Id*. at 1284-85.

[32] Both parties have commented on a 1978 case entitled *Horney v. Parker*. *Horney v. Parker*, C.A. No. 77C-0C-4, Walsh, J. (Del. Super. 1978); Dkt 17, 18. Although this case discussed the right of reimbursement under 21 *Del. C.* 2118, it was decided well before the most recent statutory amendments to 21 *Del. C.* § 2118. Additionally, at the time *Horney* was decided, there was no avenue available for binding arbitration. Thus, *Horney* is inapposite.

that mistake as the fault of GEICO. This Court views the facts of this particular case as similar to those cases denying recovery for a unilateral mistake.[33]

In conclusion, this Court does not interpret 21 *Del. C.* § 2118(g)(5) as creating as statutory cause of action to challenge a valid intercompany arbitration award, under the circumstances such as are present in this case.[34]

Alternatively, this Court believes that the particular facts of this case should preclude recovery because GEICO knew or should have known of a pending bodily injury claim and did not seek to postpone arbitration. This litigation ultimately stems from GEICO's failure to request deferment of the arbitration, and this Court holds that GEICO may not recover for such mistake.

For the forgoing reasons, State Farm's motion for summary judgment is **GRANTED**.

IT IS SO ORDERED.

Richard R. Cooch, J.

oc: Prothonotary

[33] *Aetna Cas. & Sur. Co. v. LaFazia*, 1982 WL 117015 (Del. Ch.).

[34] If such a cause of action is to be established, it must be created by the General Assembly.