

IN THE SUPREME COURT OF THE STATE OF DELAWARE

THE FIRST HEALTH
SETTLEMENT CLASS,

Defendant Below,
Appellant,

v.

CHARTIS SPECIALTY
INSURANCE COMPANY,

Plaintiff Below,
Appellee.

§
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§ No. 498, 2013
§
§ Court Below – Superior Court
§ of the State of Delaware,
§ in and for New Castle County
§ C.A. No. 09C-09-027
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Submitted: April 9, 2014
Decided: April 11, 2014

Before **HOLLAND, JACOBS** and **RIDGELY**, Justices.

ORDER

This 11th day of April, 2014, it appears to the Court that:

1) This is an appeal from a judgment entered after a May 7, 2013 Opinion issued by the Superior Court (the “Opinion”) on cross-motions for summary judgment. That Opinion concluded the remedies under La. Rev. Stat. § 40:2203.1(G) (“Section 2203.1(G)”) are not damages as expressly stated therein, but instead are penalties. From that determination, the Superior Court held that First Health Group Corporation’s (“First Health”) \$150.5 million payment to settle class action claims in the underlying case of *Gunderson v. F.A. Richard & Associates, Inc.*, in the 14th Judicial District

Court, Parish of Calcasieu, Louisiana (the “*Gunderson* Action”), was excluded from coverage under First Health’s tower of errors and omissions (“E&O”) insurance policies.

2) On May 16, 2013, the Superior Court issued an order granting summary judgment to defendant-appellee, Chartis Specialty Insurance Company (“Chartis”) and denying the First Health Settlement Class’s cross-motion for partial summary judgment.

3) On August 23, 2013, the Superior Court entered a final order and judgment (the “Judgment”). On September 3, 2013, the First Health Settlement Class filed a motion to alter or amend the Judgment under Rule 59(d), or alternatively, for relief from the Judgment under Rule 60(b) (the “Rule 59/60 Motion”). The Rule 59/60 Motion was based on a recent decision by a Louisiana court in *George Raymond Williams M.D. Orthopedic Surgery v. SIF Consultants of Louisiana* in the 27th Judicial District Court, Parish of St. Landry, Dkt. No. 09-C-5244-C (the “*Williams* Action”), issued July 29, 2013, which construed the same statute and same insurance policy. The Louisiana Court held that the remedy under Section 2203.1(G) provided for damages, not a penalty, and that the remedy was covered under the policy. The *Williams* decision distinguished and criticized the Superior Court’s Opinion as erroneous.

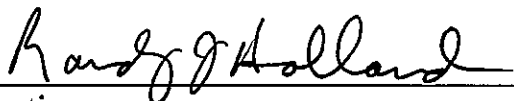
4) On September 23, 2013, the First Health Settlement Class filed a notice of appeal from the Judgment. On September 25, 2013, the Superior Court issued an order denying the First Health Settlement Class's Rule 59/60 Motion.

5) This Court has before it procedural motions to dismiss. This proceeding has also been submitted for a substantive decision on the merits after briefing and oral arguments.

6) We have concluded that any further action in this matter should be stayed pending a final unappealable ruling from the Louisiana courts in the *Williams* Action.

NOW, THEREFORE, IT IS HEREBY ORDERED that this matter is stayed. The parties are directed to advise the Clerk of this Court about the status of the *Williams* Action on the 15th day of each month, beginning on May 15, 2014.

BY THE COURT:


Justice