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

LUCIANA GORUM, Plaintiff, v. GEICO INDEMNITY COMPANY, Defendant.	))))))	C.A. No. N11C-07-210 PLA

Submitted: November 18, 2011
Decided: December 8, 2011

UPON DEFENDANT GEICO INDEMNITY COMPANY'S MOTION FOR SUMMARY JUDGMENT

DENIED

On this 8th day of December, 2011, it appears to the Court that:

1. Plaintiff Luciana Gorum ("Gorum") was injured in an automobile accident that occurred at the intersection of Routes 141 and 13 in New Castle County, Delaware on September 8, 2010. She was treated at the Christiana Hospital for back pain and referred to Dr. Alfred Fletcher ("Dr. Fletcher"), her primary doctor, for further evaluation. Dr. Fletcher recommended a course of physical therapy. On January 25, 2011, at the request of her insurance company, Gorum underwent an independent medical evaluation ("evaluation") with Dr. Kevin Hanley ("Dr. Hanley") of Crofton, Maryland. Dr. Hanley determined that Gorum did not require ongoing medical treatment for her back pain.

2. On March 14, 2011, Gorum had a follow-up appointment with Dr. Fletcher, who referred her to Dr. Arnold Glassman ("Dr. Glassman") of the Delaware Back Pain and Sports Rehabilitation Center for further evaluation and treatment in response to her complaints of continued back pain. Dr. Glassman recommended continued rehabilitative therapy, including trigger-point injections, to address Gorum's ongoing complaints.

3. At the time of the accident, Gorum's vehicle was insured by Defendant GEICO Indemnity Company ("GEICO"). Gorum's insurance policy with GEICO provided for personal injury protection benefits in accordance with 21 *Del. C.* §2118, which requires GEICO to compensate Gorum for, *inter alia*, reasonable and necessary medical expenses and lost wages incurred within two years from the date of the accident.

4. Following an arbitration hearing before a panel of the Insurance Commissioner of the State of Delaware on June 29, 2011, Gorum received an award of $1248.81 of outstanding pre-evaluation medical expenses. The panel declined to award an additional $1043.13 in post-evaluation medical expenses, finding that Gorum "agreed with IME doctor's report and there were no medical records submitted to support claim for period of medical treatment with Dr.

Glassman's office."[1] The arbitration panel's decision does not include a transcript of the hearing.

5. Gorum subsequently appealed the arbitration panel's decision to this Court and requested a trial *de novo* against her insurance company. Gorum seeks to recover medical expenses, wage loss and related expenses. GEICO filed this Motion for Summary Judgment under Superior Court Civil Rule 56. GEICO does not dispute the arbitration panel's decision to award $1248.81 in medical expenses incurred prior to the independent medical evaluation, nor does it dispute the award of arbitration costs to Gorum. Rather, GEICO argues that this dispute presents no genuine issue of material fact because Gorum agreed with the findings of the IME at the arbitration panel.

6. Summary judgment is appropriate where the record presents no genuine issue of material fact and the moving party is entitled to judgment as a matter of law.[2] When considering a motion for summary judgment, the Court must view the record in the light most favorable to the non-moving party, and the Court must draw all reasonable inferences in favor of the non-moving party.[3] On a motion for summary judgment, the moving party bears the initial burden of

[1] *Gorum v. GEICO Indemnity Co.*, No. 118096 (Dept. of Ins. Arbitration Award Panel Jun. 29, 2011) (ARBITRATION DECISION).
[2] Super. Ct. Civ. R. 56(c).
[3] *E.g.*, *Merrill v. Crothall-American, Inc.*, 606 A.2d 96, 100 (Del. 1992).

showing that there are no material facts in dispute.[4] If the moving party meets this burden, then the burden shifts to the non-moving party to set forth specific facts in its response to the motion for summary judgment that go beyond the bare allegations of the complaint.[5] Where a party "fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which the party will bear the burden of proof at trial," the Court must enter summary judgment against that party.[6]

7. GEICO's motion for summary judgment requires the Court to determine whether an arbitration panel's decision precludes the parties from re-litigating the issues determined at the arbitration hearing. The Court finds that it does not. 21 *Del. C.* §2118(j) establishes an arbitration procedure to any party claiming entitlement to personal injury protection benefits. Under the statute, such arbitration is "purely optional" and "neither party shall be held to have waived any of its rights by any act relating to arbitration…."[7] Furthermore, the statute provides that "the losing party shall have a right to appeal *de novo* to the Superior Court if notice of such appeal is filed with that Court in the manner set forth by its rules within 30 days of the decision being rendered."[8]

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[4] *Manucci v. The Stop 'n' Shop Companies, Inc.*, 1989 WL 48587, *2 (Del. Super. May 4, 1989).
[5] *Id.* at *3.
[6] *Id.* at *4.
[7] 21 *Del. C.* §2118(j)(5).
[8] *Id.*

8. GEICO argues that Gorum's appeal presents no genuine issue of material fact because GEICO does not dispute the arbitration panel's award and because the panel determined that further compensation was inappropriate because Gorum said that she agreed with the independent medical expert's conclusion that further medical treatment was not warranted. Essentially, GEICO appears to be arguing that the doctrine of *res judicata* prevents Gorum from re-litigating whether her injuries entitle her to further compensation from her insurance company.

9. GEICO's position is inconsistent with Delaware law. This Court has already held that an arbitration panel's decision "will not give rise to the application of *res judicata* or collateral estoppel."[9] First, the statute establishing an arbitration procedure for disputes over personal injury coverage expressly provides that the losing party has the right to appeal the arbitration panel's decision *de novo* to the Superior Court within thirty days. GEICO makes no argument that Gorum's request for an appeal was untimely. Furthermore, the statute also makes clear that the parties do not waive any of their rights by submitting to arbitration.

10. In this case, there is no hearing transcript attached to the arbitration panel's decision. The parties dispute in their briefs the extent to which Gorum agreed with the independent medical expert's evaluation. A single sentence in the arbitration panel's decision that Gorum agreed with the independent medical

[9] *Scott v. Bey*, 1986 WL 5865, *4 (Del. Super. April 28, 1986).

expert's finding, without more, does not provide this Court with a basis for concluding that there is no genuine issue of material fact present in this dispute. To accept GEICO's argument would vitiate the right of appeal established by 21 *Del. C.* §2118(j)(5).

11. After having reviewed the record in this case, the Court is satisfied that a genuine issue of material fact exists and that summary judgment at this time would be improper. Accordingly, Defendant GEICO's Motion for Summary Judgment is hereby DENIED.

IT IS SO ORDERED.

/s/ Peggy L. Ableman
PEGGY L. ABLEMAN, JUDGE

Original to Prothonotary