SUPERIOR COURT
OF THE
STATE OF DELAWARE

RICHARD F. STOKES
JUDGE

1 THE CIRCLE, SUITE 2
SUSSEX COUNTY COURTHOUSE
GEORGETOWN, DE 19947

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Re: ***Sammons v. Hartford Underwriters Insurance Co.***
Cr.A. No. S09C-12-026 RFS

Defendant's Motion to Strike.
Defendant's Motion to Limit Discovery and for Protective Order.
Judgment for Defendant.

Submitted: December 12, 2011
Decided: December 15, 2011

Dear Counsel:

Defendant Hartford has filed a Motion to Strike Class Allegations and a Motion to Limit Discovery and for Protective Order. On class certification, Defendant's primary argument is that Mrs. Sammons is not a "claimant" pursuant to § 2118B(c) and thus she has suffered no injury for which she can serve as a class representative pursuant to Rule 23(d)(4). This argument, if true, is dispositive of the issues of class certification, discovery and the remaining question in the Sammons' action for damages

Plaintiffs' proposed class is defined in Paragraph 26 of the Class Action Complaint:

> All of Hartford's Delaware insureds who, during the period December 22, 2006 to the present, submitted covered claims for medical expenses, lost earnings or other benefits under PIP coverages issued as part of Hartford's insurance contracts; but whose claims, though not disputed by Hartford at the time, were paid by Hartford only after the expiration of the thirty-day period under 21 *Del.C.* § 2118B(c).

Plaintiffs accumulated 24 health expense bills as a result of the car accident. Hartford paid all 24 claims, but Plaintiffs alleged that four claims were untimely paid and sought class certification. This Court determined that one of the four claims raised a fact question and offered Plaintiffs the opportunity to identify other untimely paid claims. None was offered.

Thus, the timeliness of the payment of one of Plaintiffs' PIP claims remains in dispute. Mrs. Sammons received treatment at Physical Therapy Associates ("PTS") on April 9 and 12, 2007 ("the PTS bill"). This bill was paid in full on June 15, 2007. The question is whether Hartford received the bill on June 14, 2007, as Defendants allege or at some earlier point as Plaintiff allege.

Defendant argues that under the terms of § 2118B, Plaintiffs are not "claimants." Subsection (a) states that the dual purposes of § 2118B are to ensure reasonably prompt payment by insurers and to prevent the damage to personal credit ratings. Plaintiffs emphasize these points by quoting a Delaware senator who spoke in favor of the

proposed 30-day payment period during the General Assembly's consideration of the amendment. The Senator stated that the 30-day payment period and associated interest payments for unpaid, undisputed claims would benefit individuals who need to "feed their child or pay their mortgage."[1] In other words, the amendment was intended to benefit people who could face financial hardship if their insurers did not timely paid their medical bills. In this case, Mr. and Mrs. Sammons were not financially harmed even if the PTS bill was untimely paid because PTS submitted the claim, not Plaintiffs. It follows that, not having the claim, Plaintiffs were not deprived of the statutory interest on the allegedly late payment. This conclusion depends on the language of § 2118B, as discussed below.

As noted by defense counsel, a person seeking unemployment benefits is always the "claimant." A person seeking workers' compensation benefits is always the "claimant." Payment of medical bills under an automobile insurance policy operates differently. If § 2118B uses the term "claimant" in a manner that is less than clear, Defendant's argument will raise an issue of statutory construction.

The goal of statutory construction is to determine and give effect to legislative intent.[2] The meaning of the statute must first be examined in the language of the statute. If that language is plain and susceptible of only one meaning, the judicial role is to

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[1]Class Action Complaint at ¶ 15, quoting an audiotape of Senator Thomas B. Sharp (D. Pinecrest).

[2]*Del. Dept. of Health & Soc. Servs v. Jain*, 29 A.3d 207, 215 (Del. 2011).

enforce it according to its provisions.[3]

Viewing § 2118B as a whole, the Court finds that use of the term "claimant," as opposed to "insured" or "policyholder," intentionally acknowledges that a request for payment of a medical bill may be filed by either a health care provider or a policyholder, depending on the terms of the insurance contract.

The term "claimant" appears in Chapter 21, Registration of Vehicles, only in section 2118B. This section establishes the procedure for submission and payment of covered medical bills under an automobile insurance policy. Subsection (a) states that the purpose of § 2118B is to protect policyholders (not "claimants") from the financial hardship caused by unpaid bills by imposing on insurers a 30-day period to pay undisputed claims, with interest charged for non-compliance. This purpose is notable here because the policyholder suffers harm from a decreased credit score or from bills being turned over to a collection agency.

The first reference to a "claimant" appears in subsection (b):

> When an insurer is notified in writing by the claimant that the claimant desires to file an initial claim for benefits pursuant to § 2118(a)(2) of this title, the insurer shall, no later that 10 days following the insurer's receipt of said notification, provide that claimant with a form for filing such a claim."

The term "claimant" needs no definition. Its meaning is clear from the language of subsection (b), which does not mention an insured or a policyholder. The term "claimant"

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[3] *Friends of the Fletcher Brown Mansion v. City of Wilmington*, 2011 WL 6148717, at *3 (Del.)(citing *Caminetti v. United States*, 242 U.S. 470, 485 (1917)).

acknowledges the general but not universal practice of health care providers submitting payment claims to insurers.

Subsection (c) sets forth an insurer's duty to pay a claim within 30 days of confirmation that the expense is compensable. The first sentence is notable: "When an insurer receives a written request for payment of a claim for benefits pursuant to § 2118(a)(2). . . .the insurer shall promptly process the claim and shall. . . make payment. . . to the claimant." No reference is made to who submits the request, and payment goes to the "claimant." This subsection also states that any interest is due to the "claimant," not limited to an insured or a policyholder. The Court finds from the clear language of subsection (c) that payment may be made to a health care provider, which generally submits claims for payment.

If an insurer fails to timely pay a covered expense, Subsection (d) provides for a civil action or arbitration pursuant to § 2118(j), at the option of "the claimant." Under § 2118(j) "the party claiming to have suffered a loss or damages" may request arbitration. Loss or damages for unpaid medical bills may accrue to an insured, a health care provider or, as stated in § 2118(a)(2)a, the personal representative of the estate if a death has occurred. Thus, Subsection (d) provides a remedy for the claimant, not limited to an insured or a policyholder, who has suffered a loss because of an unpaid medical bill.

Finally, subsection (f) states that the remedies in § 2118B are in addition to all other remedies available to the claimant, not an insured or a policyholder.

The only meaning that can be ascribed to the term "claimant" as it is used in § 2118B, and in conjunction with § 2118(j), is that it is intended to include either an insured or a medical provider. As it is used throughout § 2118B, the term is not susceptible of any other meaning, and, specifically, is not limited to an insured or a policyholder.

In this case, the PTS bill was submitted to Hartford by PTS. If payment was late, Mrs. Sammons did not suffer any harm or injury because her bill was paid. Common sense dictates that "the claimant" who submitted the claim receives any statutory damages. The bill was not submitted by or paid to Mrs. Sammons and therefore, even if payment was untimely, Mrs. Sammons is not entitled to any statutory interest.

Even assuming that the PTS bill was not paid within the statutory 30-day time frame, Mrs. Sammons has not been harmed or injured because she was not "the Claimant" under § 2118B and is therefore not entitled to statutory interest, which is the alleged harm. The opening words of Rule 23(a) reinforce this conclusion: "one or more members of a class may sue or be sued as representative parties. . . ." Without financial damage, it follows perforce that Mrs. Sammons has no standing to serve as a class representative.

The language of § 2118B is plain on its face. The word "claimant" is used in recognition of the general practice that health care providers submit claims to insurers. If those claims are not paid, the policyholder is ultimately responsible for its nonpayment and is at risk of financial difficulties, as stated in § 2118B(a). The Court accepts

Defendant's argument in ¶ 3 of its Reply Brief in Support of Motion to Strike and Defendant's position at oral argument that a § 2118B claimant may be an insured or a medical care provider.[4]

This conclusion moots the parties' arguments as to typicality and the predominance of individual issues. It also means that Plaintiffs cannot prevail on their § 2118B(c) claim for interest on the PTS bill. The numerosity and typicality discovery requirements set forth in *Benning v. Wit Capital Group, Inc.,*[5] do not apply here because without a class representative, there can be no class. Further discovery cannot change the legal and factual findings that Mrs. Sammons was not the claimant and did not suffer any damage. The purpose of encouraging timely payments from insurers is fulfilled whether payment is made to either a medical provider or a policyholder who, under the provisions of its auto insurance policy is required to submit claims directly to the insurer.

Plaintiffs object to Defendant's Motion to Strike on grounds that it an impermissible repetitive dispositive motion under Civil Rule 12(g). This Court has allowed a successive summary judgment motion where circumstances favored it.[6] In this

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[4]In the Motion to Strike Class Allegations, Defendant asserts in ¶ 10 that the purpose of § 2118B is to "ensure reasonably prompt payment of sums owed by insurers to their policyholders and other persons." This incomplete quotation allowed Defendant to argue that the medical provider was an "other person," specifically, a claimant. The fallacy of this argument is clarified by reading further: the purpose is to "ensure reasonably prompt processing and payment of sums owed by insurers to their policyholders and **other persons covered by their policies**. . . ." Hartford corrected its position in the Reply Brief and at argument.

[5]2001 WL 1388544, at *1 (Del.).

[6]*Holland v. Besser Manufacturing Co.*,1979 WL 186365 (Del. Super.).

case, the materiality of Defendant's argument dictates that it not be foreclosed on procedural grounds. In fact, Defendant's argument as to Plaintiffs' status as class representatives spilled over into Plaintiffs' remaining fact question about the PTS bill. Resolving that question now serves the interests of the parties while advancing judicial economy.

For all these reasons, Defendant Hartford's Motion to Strike Class Allegations is **GRANTED**. Defendant's Motion to Limit Discovery and for Protective Order is **MOOT**. As a further result of Defendant's argument that Plaintiffs have no standing to serve as class representatives, the remaining fact question as to when Hartford received the PTS bill is **MOOT**, because even if the bill was not timely paid, the Sammons were not the claimants under 21 *Del.C.* § 2118B.

Judgment on the case is entered for Defendant.

IT IS SO ORDERED.

Very truly yours,

Richard F. Stokes

cc: Prothonotary
Paul M. Hummer, Esquire
Amy L. Piccola, Esquire