IN THE SUPERIOR COURT OF DELAWARE

IN AND FOR NEW CASTLE COUNTY

HAWOULATOU NDIENG, Individually,	)	
Plaintiff,	)	
v.	)	C.A. No. N11C-10-057-WCC
CHARLES O. WOODWARD, Individually,	)	
Defendant.	)	

Submitted: October 24, 2012
Decided: December 19, 2012

Defendant's Motion for Summary Judgment – GRANTED

ORDER

James P. Hall, Esquire, Phillips, Goldman & Spence, P.A., 1200 N. Broom Street, Wilmington, DE 19806-4204. Attorney for Plaintiff Hawoulatou Ndieng.

Anthony Forcina, Esquire, 220 Continental Drive, Suite 205, Newark, DE 19713. Attorney for Defendant Charles O. Woodward.

CARPENTER, J.

Before this Court is Defendant Charles O. Woodward's ("Woodward") Motion for Summary Judgment. At issue is whether Hawoulatou Ndieng's ("Ndieng") personal injury claim stemming from a 2006 motor vehicle collision is time barred or, instead, is tolled pursuant to 18 *Del. C.* § 3914. Specifically, the parties dispute whether 18 *Del. C.* § 3914 requires a non-Delaware resident to provide notice of the applicable statute of limitations. The Court finds that, under the circumstances of this case, Woodward's Motion for Summary Judgment is hereby **GRANTED**.

FACTUAL AND PROCEDURAL BACKGROUND

The facts of the case are relatively straightforward and undisputed. Woodward's Motion for Summary Judgment arises from a 2006 motor vehicle collision. On November 25, 2006 at approximately 2:00 p.m., Ndieng was operating a vehicle that was traveling westbound on 26th Street in Wilmington, Delaware and approaching the intersection of 26th Street and Market Street. At the same time, Woodward was traveling southbound on Market Street and approaching the same intersection. Woodward, however, disregarded a red traffic signal and entered the intersection, which caused a collision with Ndieng's vehicle. As a result of the collision, Ndieng suffered personal injuries. Both

drivers were insured; Ndieng, a Delaware resident, was insured by American Independent, and Woodward, a Georgia resident, was insured by Allstate.

On October 6, 2011, Ndieng filed a personal injury lawsuit against Woodward, seeking damages for injuries caused by the 2006 accident. Specifically, Ndieng's Complaint alleged the action was not time barred because of 18 *Del. C.* § 3914.[1] On November 7, 2011, Woodward filed an Answer, raising the statute of limitations as an affirmative defense. On October 3, 2012, Woodward filed the present Motion for Summary Judgment, asserting Ndieng's claim was time barred pursuant to 18 *Del. C.* § 3914.

STANDARD OF REVIEW

When reviewing a motion for summary judgment pursuant to Rule 56(b), the Court must determine whether any genuine issues of material fact exist.[2] Specifically, the moving party bears the burden of showing that there are no genuine issues of material fact so that he is entitled to judgment as a matter of law.[3] Additionally, the Court must view all factual inferences in a light most favorable to the non-moving party.[4] However, summary judgment will not be

[1] Section 3914 provides: "An insurer shall be required during the pendency of any claim received pursuant to a casualty insurance policy to give prompt and timely written notice to claimant informing claimant of the applicable state statute of limitations regarding action for his/her damages." 18 *Del. C.* § 3914.
[2] Super. Ct. R. 56(c); *Wilmington Trust Co. v. Aetna,* 690 A.2d 914, 916 (Del. 1996).
[3] *Moore v. Sizemore*, 405 A.2d 679 (Del. 1979).
[4] *Alabi v. DHL Airways, Inc.*, 583 A.2d 1358, 1361 (Del. 1990).

granted if it appears that there is a material fact in dispute or that further inquiry into the facts would be appropriate.[5]

DISCUSSION

The parties agree that the statute of limitations period for personal injury lawsuits is two years and that Ndieng's action was filed more than two years after the collision.[6] It is equally undisputed that Woodward never gave Ndieng notice of the applicable statute of limitations. The parties, however, dispute whether 18 *Del. C.* § 3914 requires Woodward to provide Ndieng with notice of the applicable statute of limitations.

In support of his Motion for Summary Judgment, Woodward argues: 1) he is an out-of-state resident and, therefore, is not subject to the notice requirement under 18 *Del. C.* § 3914; 2) he does not meet the definition of "insurer" pursuant to 18 *Del. C.* § 3914 and, therefore, is not subject to the notice requirement; and 3) Ndieng filed the claim after the two-year statute of limitations expired and no issue of material fact exists to toll the statute of limitations. In response, Ndieng argues that because Woodward was insured by Allstate, who also writes insurance in Delaware and is handling Woodward's claim, the notice provision should apply.

[5] *Ebersole v. Lowengrub*, 180 A.2d 467, 470 (Del. Super. 1962), *rev'd in part* on procedural grounds and *aff'd in part*, 208 A.2d 495 (Del. 1965).

[6] *See* 10 *Del. C.* § 8119 ("No action for the recovery of damages upon a claim for alleged personal injuries shall be brought after the expiration of 2 years from the date upon which it is claimed that such alleged injuries were sustained . . .").

A. Section 3914's Notice Requirement

Pursuant to 18 *Del. C.* § 3914, an insurer is required to provide a claimant with notice of the applicable statute of limitations regarding an action for damages. The statute is "an expression of legislative will to toll otherwise applicable time limitations with respect to claims made against insurers."[7] Furthermore, "[a]n insurer who fails to comply with Section 3914's notification requirement is estopped from asserting the statute of limitations defense against the claimant,"[8] and "the insurer's obligations under Section 3914 cannot be waived through the claimant's actions."[9]

B. Section 3914 Does Not Apply to Out-of-State Residents

The notice requirement of 18 *Del. C.* § 3914 must be read in the context of the contracts covered in 18 *Del. C.* § 3901. These statutes, read together, clearly extends the notice requirement to "contracts of casualty insurance covering subjects resident, located or to be performed in [] [Delaware]."[10] In *LaFayette v. Christian*[11], this Court held that "Section 3914 does not apply to out-of-state

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[7] *Stop & Shop Cos. v. Gonzalez,* 619 A.2d 896, 898 (Del. 1993) (citing *Lankford v. Richter,* 570 A.2d 1148, 1149 (Del. 1990)).

[8] *LaFayette v. Christian*, 2012 WL 3608690, at *2 (Del. Super. Aug. 21, 2012) (citing *Fleming v. Perdue Farms, Inc.,* 2002 WL 31667335, at *2 (Del. Super. Oct. 30, 2002)).

[9] *Id*. at *2 (citing *Mullin v. W.L. Gore & Assoc.,* 2006 WL 1704095, at *2 (Del. Super. May 26, 2006)).

[10] 18 *Del. C.* § 3901 ("All contracts of casualty insurance covering subjects resident, located or to be performed in this State are subject to the applicable provisions of Chapter 27 (The Insurance Contract) of this title, and to other applicable provisions of this title.").

[11] 2012 WL 3608690, at *2 (Del. Super. Aug. 21, 2012).

insurers issuing any policy covering a non-Delaware resident, non-Delaware property, or activities to be performed outside of Delaware."[12] Specifically, this Court in *LaFayette* reasoned that if "the Legislature [had] intended for out-of-state insurers to be included within the scope of Section 3914, [then] it could have included the specific necessary language in Section 3901 and/or Section 3914."[13] As a result, this Court in *LaFayette* concluded that it could "infer that omission of any reference to out-of-state insurers, or non-Delaware policies, was intentional."[14]

Ndieng attempts to get around the *LaFayette* decision by arguing that, unlike the insurance company in *LaFayette*, Allstate writes insurance contracts in Delaware and, therefore, would be aware of the notice requirement of Section 3914. While, at first blush, this argument may have some appeal, the Court finds that, upon further analysis, it does not change the reasoning in *LaFayette*. The insurance contract at issue here, which allegedly creates the obligation, is the one between Woodward and Allstate and it has no relationship to Ndieng to whom the notice obligation would run. Moreover, Woodward is not a resident of Delaware,

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[12] *Id.* at *3.

[13] *Id.*

[14] *Id.* at *3 n.18 ("To broaden the scope of Section 3914, to include out-of-state insurers issuing non-Delaware related policies, would raise a host of public policy concerns. For instance, if an out-of-state insurer were required to give notice, a question arises as to what state statute of limitations the insurer would be required to provide. The injured plaintiff may elect to initiate litigation in the resident state, the tortfeasor's resident state, or the state in which the accidence occurred. To be in compliance with Section 3914, therefore, an insurer would have to give notice of all potentially applicable state statute of limitations. The Court finds no indication that the Legislature intended such a result.").

whom the legislature would have an interest in protecting. Specifically, Woodward is not located in Delaware as there is no dispute that he is domiciled in Georgia. Further, the insurance contract is not written to cover some specific activity to be performed in Delaware. At best, the Delaware contact is truly happenstance, and the Court finds such an event is not covered by Section 3901. The Court can find nothing in the statutes that expands coverage simply because the insurance company of the out-of-state tortfeasor also writes insurance in Delaware. The Court, therefore, finds Section 3914 does not apply to toll the statute of limitations here because Woodward is an out-of-state, insured resident. Further, even if Woodward was a Delaware resident, Section 3914 would not apply because he not an insurer under the statute as discussed below.

C. Section 3914 Does Not Apply to an Individual Tortfeasor

Although Section 3914 does not distinguish between independent insurers and self-insurers, the Court finds that Woodward is neither an insurer nor a self-insurer for the purposes of 18 *Del. C.* § 3914.[15] The facts indicate: 1) Woodward is an individual who is a Georgia resident; 2) he was insured by Allstate in the state of Georgia; and 3) he operated a Georgia-registered vehicle, which was involved in the 2006 collision. Further, it is undisputed that Woodward is not "in

[15] *See Stop & Shop Cos.*, 619 A.2d at 898 (discussing how insurance operates).

the business of entering into contracts for insurance, or setting aside money to 'fund' the payment of claims that may be asserted against them" and, therefore, he is not an "insurer" subject to Section 3914's notice requirement.[16]

As this Court previously held in *LaFayette*, it would be inconsistent with the purpose underlying Section 3914 to impose its notice requirement on Woodward, particularly since he bears no relation with the insurance company beyond being a policyholder.[17] Because Section 3914 was intended to "protect unsophisticated claimants from more sophisticated *insurance companies*," it is illogical to expand that premise to parties whose interests are adverse to each other and with which they have no contractual relationship.[18] To rule otherwise would estop Woodward—as opposed to an insurer—from asserting the statute of limitations as an affirmative defense. Stated alternatively, "the failure of the insurer to provide notice pursuant to Section 3914 does not affect the tortfeasor's entitlement to assert the statute of limitations as a defense."[19] Therefore, the Section 3914 obligation runs to the insurance company and not the tortfeasor.

Here, the Court finds that Woodward was not only entitled to raise the statute of limitations as an affirmative defense but that Ndieng's Complaint is statutorily barred. Although the Court certainly appreciates that Ndieng suffered

[16] *LaFayette*, 2012 WL 3608690, at *2 (citing *Farm Family Ins. Co. v. Conectiv Power Delivery*, 2008 WL 2174411, at *3 (Del. Super. May 21, 2008)).
[17] *See id.* at *2.
[18] *Farm Family Ins. Co.*, 2008 WL 2174411, at *3 (citations omitted).
[19] *LaFayette*, 2012 WL 3608690, at *3.

personal injuries as a result of the 2006 collision and has an interest in holding someone accountable, the Court finds that Ndieng's Complaint, filed nearly five years after the collision, is untimely. Further, for the reasons set forth above, Section 3914 does not serve to toll the statute of limitations. If another result was intended by the legislation, a correction to the statute—and not a Court ruling—is needed to effectuate the change.

Therefore, Defendant's Motion for Summary Judgment is hereby **GRANTED**.

IT IS SO ORDERED.

/s/ William C. Carpenter, Jr.
Judge William C. Carpenter, Jr.