IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR NEW CASTLE COUNTY

BEVERLY L. EVANS Plaintiff	)	
v.	)	CA. No.: 06C-12-082 FSS
STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY Defendant	)	

Submitted: February 17, 2009
Decided: April 13, 2009

ORDER

Upon Plaintiff's Motion for Reargument – DENIED

This motion stems from the court's granting Defendant's motion for summary judgment. Plaintiff sought reimbursement from Defendant for payments made by her healthcare insurer following a May 23, 2003 automobile collision. Specifically, Plaintiff wanted approximately $5,000 for bills Plaintiff failed to submit to Defendant within 27 months after the collision, including some with zero balances.

After oral argument on December 5, 2008, the court issued a letter addressing its preliminary position.[1] The court initially granted summary judgment based upon the "27-month rule," but requested clarification on collateral issues.

[1] Docket Item ("D.I.") No. 20.

Plaintiff failed to respond, so on January 20, 2009, the court granted summary judgment as unopposed.[2] The court specifically ordered that, if Plaintiff filed a motion for reargument, she was to explain her failure to respond to the court's December letter.

On February 4, 2009, instead of a proper motion for reargument, Plaintiff filed a letter. Plaintiff's counsel claims the court's December 2008 letter was never received. (Defendant seems to have received its copy.) Although neither timely or in order,[3] as a courtesy, the court will consider Plaintiff's submission as a motion for reargument.

This is a breach of contract case between Plaintiff and her PIP carrier, State Farm. This case centers around a "PIP medical cut-off letter" issued by Defendant after a May 2004 DME. The letter generally asserted that Defendant's doctor determined Plaintiff's injuries were not related to the May 2003 collision and, therefore, Defendant would not cover expenses after May 14, 2004. The letter also indicated that Plaintiff should forward to Defendant "any additional information [Plaintiff] would like State Farm to consider."

As a result of the "cut-off letter," Plaintiff did not submit anything.

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[2] D.I. No. 21.

[3] Super. Ct. Civ. R. 59(e).

Moreover, Plaintiff's healthcare provider, Aetna, picked up the tab on most of Plaintiff's accident-related expenses. So, on May 13, 2005, Aetna sent Plaintiff a lien notice for what it paid. Defendant did not get wind of the lien, or any other pending bills, until July 2006, more than three years after the accident.

Plaintiff filed her complaint on December 12, 2006. On July 17, 2008, Defendant filed a motion for summary judgment asserting, among other things, that Plaintiff's claim was barred under 21 *Del. C.* § 2118(a)(2)(i)(2)'s "27-month rule"[4] for failure to timely submit bills. Plaintiff responded that Defendant was estopped from arguing the "27-month rule" due to the "cut-off letter." Plaintiff argued that an insured should not be punished for failing to engage in a futile act, submitting bills that would be denied.

As mentioned above, the court ultimately granted summary judgment as unopposed and Plaintiff now moves for reargument. A Rule 59(e) motion for reargument provides the trial court an opportunity to reconsider its initial decision

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[4] 21 *Del. C.* § 2118(a)(2)(i)(2) reads:

> Payments of expenses...shall be made as soon as practical after they are received during the period of 2 years from the accident. Expenses which are incurred within the 2 years but which have been impractical to present to an insurer within the 2 years shall be paid if presented within 90 days after the end of the 2-year period.

before an appeal.[5] A motion for reargument will be denied unless the court overlooked controlling principles, or misapplied the law or facts in such a way that would change the outcome of the underlying decision.[6] Rule 59(e) motions cannot present new arguments, nor rehash those already presented.[7]

Here, Plaintiff fails to present reasons why the court should reconsider its holding that Plaintiff's claims are barred by the "27-month rule." Plaintiff only reiterates her position, maintaining the estoppel argument presented on summary judgement based on *Salvatore v. State Farm Mutual Auto. Ins.*[8] and *Coury v. State Farm Mutual Auto. Ins*.[9] Plaintiff, however, fails to acknowledge the distinguishing factors between those cases and why summary judgment is appropriate here.

In *Salvatore*, the plaintiff was injured in an automobile collision and denied benefits after a DME.[10] Within the 27 months post-accident, Salvatore submitted a detailed PIP claim to State Farm and filed a complaint.[11] Therefore,

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[5] *Hessler, Inc. v. Farrell*, 260 A.2d 701, 702 (Del. 1969).

[6] *Reid v. Hindt*, 2008 WL 2943373, *1 (Del. Super. July 31, 2008).

[7] *Id*.

[8] 2005 WL 1952904 (Del. Super. July 28, 2005).

[9] 2007 WL 1748660 (Del. Super. June 5, 2007).

[10] *Salvatore*, 2005 WL 1952904 at *1.

[11] *Id.*

Salvatore held that State Farm had timely notice of pending claims, although "not the best or most appropriate mechanism for notice."[12]

In *Coury*, the facts were similar. Coury was injured in a collision and, after a DME, received a PIP cut-off letter.[13] After the cut-off letter's effective date, Coury and her treating physician sent reports and bills to State Farm.[14] Finding that State Farm was on notice for potential surgeries from the submitted doctor's reports, *Coury* held that State Farm was barred from invoking the 27-month rule.[15]

This case is distinguishable, mainly because it lacks the common thread: notice. Here, for years, Plaintiff remained silent and never submitted anything to State Farm. Plaintiff cannot avoid the rights and obligations in Delaware's PIP statute. An insured has "a general statutory right to receive PIP benefits for defined expenses," but must satisfy the obligation to "submit claims for benefits promptly to the PIP carrier."[16] Defendant was not aware of any outstanding medical bills until July 2006 – more than three years after the collision – when it finally received Aetna's lien notice.

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[12] *Id*.

[13] *Coury*, 2007 WL 1748660 at *1.

[14] *Id*.

[15] *Id*. at *2.

[16] *Harper v. State Farm Mut. Auto. Ins. Co.*, 703 A.2d 136, 139-40 (Del. 1997).

Plaintiff has presented no facts that imply Defendant was on notice within 27 months after the collision, that includes Plaintiff's mere representation letter. Moreover, Plaintiff fails to allege any law the court overlooked or misapplied in its initial decision. Therefore, Plaintiff's Motion for Reargument is **DENIED**.

IT IS SO ORDERED.

/s/ Fred S. Silverman
Judge

cc: Prothonotary (civil)
Gordon McLaughlin, Esquire
Sherry Fallon, Esquire