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RE: Howard McMillan v. State of Delaware, C.A. No. 02A-02-008

Date Submitted: June 27, 2002

Dear Counsel:

This is my decision on Howard McMillan's ("Claimant") appeal of the Industrial Accident Board's ("Board") decision granting the State of Delaware's ("Employer") Motion to Dismiss. The Board's decision is reversed for the reasons set forth herein.

#### STATEMENT OF FACTS

Claimant, while working for Employer, slipped on a stairway landing with his left knee tightly compressed in a squatting position on October 17, 1996. Claimant sustained injuries from the fall. Claimant reported the incident to his Employer on October 21, 1996. Thereafter, Claimant filed a First Report of Injury as requested by Employer. The PMA Group ("PMA"), the State's self-insured worker's compensation plan, acknowledged receipt of a medical-only

worker's compensation claim for Claimant and assigned a claim number by a letter dated November 6, 1996.

This letter was received by Employer on November 12, 1996 and forwarded to Claimant. The letter instructed Claimant to forward any medical bills relating to the claim to PMA. Claimant did not submit any medical bills to Employer until the summer of 2000. Upon request from PMA, Claimant filed a new injury report. PMA denied the claim due to the period of time that had elapsed between the accident and the filing of the claim.

Claimant never received any lost wage benefits nor the payment of any medical expenses stemming from the incident. Claimant never signed any agreements for compensation with Employer or PMA. Claimant was not notified of the applicable statute of limitations by Employer or PMA. Claimant filed a Petition to Determine Compensation Due with the Board on January 11, 2001, that was later withdrawn upon the advice of counsel. Claimant filed a Petition to Determine Compensation Due with the Board on September 11, 2001. The Board heard argument on Employer's Motion to Dismiss asserting that the action was barred by the statute of limitations on January 24, 2002. The Board granted Employer's Motion to Dismiss by Order dated February 6, 2002. Claimant appeals from this order.

#### ISSUES PRESENTED

The first issue is whether the Board erred in declining to apply the notice provision of 18 *Del. C.* §3914<sup>1</sup> to a claim for Worker's Compensation Benefits. Claimant argues that PMA was

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<sup>1</sup>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.

required under section 3914 to provide written notice to Claimant of the applicable statute of limitations for Claimant's action. Since PMA did not provide such notice, Claimant asserts that Employer is estopped from asserting the statute of limitations defense.

The next issue is whether the Board erred in its finding that even if section 3914 was applicable, Claimant failed to file a claim triggering the notice provision of this section. Claimant argues that Employer was required to provide notice under this Section upon Claimant's report of the incident to Employer and subsequent filing of an accident report. Claimant asserts that the filing of the accident report and acknowledgment of the claim by PMA were sufficient to trigger the notice provision of section 3914.

## DISCUSSION

### A. Standard of Review

The Supreme Court and this Court repeatedly have emphasized the limited appellate review of the factual findings of an administrative agency. The function of the reviewing Court is to determine whether the agency's decision is supported by substantial evidence, *Johnson v. Chrysler Corp.*, 312 A.2d 64, 66-67 (Del. 1965); *General Motors v. Freeman*, 164 A.2d 686, 688 (Del. 1960), and to review questions of law *de novo*, *In re Beattie*, 180 A.2d 741, 744 (Del. Super. 1962). Substantial evidence means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. *Oceanport Ind. v. Wilmington Stevedores*, 636 A.2d 892, 899 (Del. 1994); *Battisa v. Chrysler Corp.*, 517 A.2d 295, 297 (Del.), *app. disp.*, 515 A.2d 397 (Del. 1986). The appellate court does not weigh the evidence, determine questions of credibility, or make its own factual findings. *Johnson v. Chrysler Corp.*, 312 A.2d at 66. It merely determines if the evidence is legally adequate to support the agency's factual findings. 29

*Del. C. § 10142(d).*

B. Statute of Limitations

The Board erred in failing to apply 18 *Del. C. §3914* to a claim for Worker's Compensation Benefits. The limitations period for commencing a worker's compensation claim is governed by 19 *Del. C. §2361*. Section 2361(a) provides: "In case of personal injury, all claims for compensation shall be forever barred unless, within 2 years after the accident, the parties have agreed upon the compensation as provided in §2344 of this title or unless, within 2 years after the accident, 1 or more interested parties have appealed to the Board as provided in §2345 of this title." 19 *Del. C. §2361*. In this case, it is undisputed that there was no agreement for compensation, nor an appeal to the Board within 2 years after the accident. Therefore, Claimant's action is time-barred pursuant to Section 2361, absent the application of 18 *Del. C. § 3914*.

However, Section 3914 of Title 18 of the Delaware Code applies in this case. Section 3914 requires insurers to give written notice of the applicable state statute of limitations during the pendency of a claim. 18 *Del. C. §3914*. In construing a statute, the court first looks to the language of the statute. *Evans v. State*, 516 A.2d 477, 478 (Del. 1986). Undefined words in a statute "should be given their ordinary, common meaning." *Coastal Barge Corp. v. Coastal Zone Indus. Control Bd.*, 492 A.2d 1242, 1245 (Del. 1985). The plain meaning of a statute controls when the statute is unambiguous. *Newtowne Village Serv. Corp. v. Newtowne Rd. Dev. Co.*, 772 A.2d 172, 176 (Del. 2001). A statute is ambiguous if it "is reasonably susceptible of different conclusions or interpretations." *Snyder v. Andrews*, 708 A.2d 237, 241 (Del. 1998)

(citing *Coastal Barge Corp. v. Coastal Zone Indus. Control Bd.*, 492 A.2d at 1246).

The language of section 3914 is unambiguous. See *Stop & Shop Co. v. Gonzales*, 619 A.2d 896, 899 (Del. 1993). In this case, it is undisputed that written notice of the statute of limitations was not provided to Claimant. Under the plain language of this section, the insurer is required to provide notice if there is a “claim received pursuant to a casualty insurance policy.” See 18 Del. C. §3914; *Woodward v. Farm Family Cas. Ins. Co.*, 796 A.2d 638, 644 (Del. 2002). Section 906 of Title 18 defines casualty insurance and includes worker’s compensation as a type of casualty insurance.<sup>2</sup> 18 Del. C. §906. Section 2702 of Title 18 defines policy as “the written contract of or written agreement for or effecting insurance.” 18 Del. C. §2702. Thus casualty insurance policies include worker’s compensation agreements such as the worker’s compensation benefits at issue in this case.

Section 3914 operates as “an expression of legislative will to toll otherwise applicable time limitations with respect to claims made against insurers.” *Stop & Shop Co. v. Gonzales*, 619 A.2d at 898 (Del. 1993) (citing *Lankford v. Richter*, 570 A.2d 1148, 1149 (Del. 1990)). An insurer who fails to comply with the notification requirements of Section 3914 is estopped from asserting the statute of limitations defense against the claimant. See *Lankford v. Richter*, 570 A.2d at 1150; *Samoluk v. Basco, Inc.*, 528 A.2d 1203, 1204 (Del. Super. Ct. 1987). Since PMA failed to provide the required notice, they are estopped from asserting the statute of limitations as

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<sup>2</sup>Section 906(3) provides: “*Workers’ compensation and employer’s liability*- Insurance of the obligations accepted by, imposed upon, or assumed by employers under law for death, disablement or injury of employees.” 18 Del. C. § 906(3).

a defense.

However, the Board found that section 3914 is not triggered in this case since a claim was not filed during the applicable statute of limitations. The term claim is not defined in the Insurance Code. Black's Law Dictionary defines claim as:

“The aggregate of operative facts giving rise to a right enforceable by a court; the assertion of an existing right; any right to payment or to an equitable remedy, even if contingent or provisional; a demand for money or property to which one asserts a right; an interest or remedy recognized at law; the means by which a person can obtain a privilege, possession, or enjoyment of a right or thing.” Black's Law Dictionary 240-41 (7<sup>th</sup> ed. 1999).

In this case, Claimant notified Employer of the incident, filed an accident report, and received correspondence from PMA acknowledging receipt of the worker's compensation claim. Although Employer argues that a formal claim was never filed, taken together these actions amount to the “pendency of a claim” triggering the application of section 3914. PMA's letter acknowledging receipt of the worker's compensation claim indicates that PMA was aware that a claim was pending. Accordingly, it was PMA's responsibility to provide notice to Claimant at that time of the applicable statute of limitations.

Moreover, the construction of the statute urged by Employer would produce an absurd result. The Court must avoid a reading of a statute that produces an absurd result. *Moore v. Wilmington Hous. Auth.*, 619 A.2d 1166, 1173 (Del. 1993). The notification provision of section 3914 serves to put a claimant on notice of the applicable statute of limitations so that a claimant may assert their rights before the expiration of the statute of limitations. *Samoluk v. Basco, Inc.*,

528 A.2d at 1204. Once a formal appeal has been filed with the Board, there is no longer a danger that the statute of limitations will expire since the claimant has already asserted his rights

by filing the petition with the Board. The purpose of section 3914 would be defeated if PMA was only required to provide notice once a formal petition had been filed with the Board.

Therefore, the reading of the statute urged by Employer must be rejected.

#### CONCLUSION

Section 3914 applies in this case. Since Claimant did not receive notice under this section, Employer is estopped from asserting the statute of limitations as a defense. Therefore, the Board erred in dismissing Claimant's petition as barred by the statute of limitations. For the foregoing reasons, the Board's decision is reversed and remanded for consideration of Claimant's petition.

**IT IS SO ORDERED.**

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E. Scott Bradley