SUPERIOR COURT
OF THE
STATE OF DELAWARE

RICHARD R. COOCH
RESIDENT JUDGE

NEW CASTLE COURT COURTHOUSE
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RE: State of Delaware Insurance Coverage Office, Appellant, v. Rabrinda Choudry and Debjani Choudry, Appellees
C.A. No. N12A–08–003 RRC

Submitted: June 26, 2013
Decided: July 24, 2013

On Appeal from a Decision of the Court of Common Pleas.

REVERSED AND REMANDED.

Dear Counsel:

INTRODUCTION

A familiar tenet of statutory construction holds that an unambiguous statute will be construed according to its plain meaning. This is the approach that must be taken with respect to 21 Del. C. § 2118. For the reasons stated below, it is the finding of this Court that the State of Delaware Insurance Coverage Office is not a self insured entity for the limited purposes of 21 Del. C. § 2118. It is therefore not required to initially proceed in arbitration, and may file a claim in the Justice of the Peace Court or any other court of competent jurisdiction.

The opinion of the Court of Common Pleas dated August 1, 2012 is hereby **REVERSED**, and the matter is **REMANDED** for proceedings consistent with this Order.

STATEMENT OF FACTS

The facts in this matter are generally not in dispute. In August of 2009,[1] a collision occurred between a marked Delaware State Police cruiser operated by Trooper Michael Cahall and a car operated by Rabrinda Choudry[2] and owned by his mother, Debjani Choudry.[3] Both vehicles sustained damage.[4]

PROCEDURAL POSTURE

The ICO filed its initial claim against the Choudrys in arbitration with the Insurance Commissioner.[5] The Insurance Commissioner Panel denied recovery on September 16, 2010, and the ICO appealed to the Superior Court on October 13, 2010.[6] On April 13, 2011, a stipulation of dismissal without prejudice was filed, and on June 6, 2011, Appellants filed a trespass complaint in the Justice of the Peace Court No. 13.[7] On December 13, 2011, the Justice of the Peace Court found in favor of the ICO; the Defendants then filed an appeal with the Court of Common Pleas.[8] On August 1, 2012, the Court of Common Pleas issued a Memorandum Opinion and Order, holding that because it found the ICO to be governed by the scope of Section 2118(g), both the Justice of the Peace Court and the Court of Common Pleas lacked jurisdiction in the matter, and that ICO's claim should have been initially pursued through arbitration.[9] The Court of Common Pleas accordingly vacated the decision of the Justice of the Peace Court. On August 7, 2012, Appellant filed the instant appeal.[10]

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[1] Although the majority of the facts are not in dispute, the record is unclear as to the exact date of the accident. The Appellant's Opening Brief states that the accident occurred on August 8, (Appellant's Opening Br. 2) while the Appellees' Answering Brief alternately lists the date as August 6 (Appellees' Answering Br. 5) and August 14 (Appellees' Answering Br. 1). The trial court's opinion lists the date as August 14 (*Choudry v. State of Delaware Insurance Coverage Office*, 2012 WL 3793446 *1 (Del. C.P. Aug. 1, 2012)).

[2] The record is similarly unclear as to the correct spelling of the appellees' last name. It appears alternately as Choudhury (Appellant's Opening Br. 1 (indicating that the name is misspelled in other filings but that the proper spelling is used in Appellant's Brief)), Choudry (Appellees' Opening Br.), and Choudrey (2012 WL 3793446 *1 (which also uses the spelling "Choudry") *Id.*).

[3] *See* Appellees' Answering Br. 1.

[4] 2012 WL 3793446 *1.

[5] *See* Appellant's Opening Br. 1.

[6] *See Id.*

[7] *See Id.*

[8] *See* Appellant's Opening Br. 2.

[9] 2012 WL 3793446 *5.

[10] *See* Appellant's Opening Br. 2.

PARTIES' CONTENTIONS

Appellant makes the following arguments in support of its appeal:

1. Title 21 Del. C. § 2118 does not apply to the State's self insurance program as the state is exempt from the Financial Responsibility Act and the State's plan is separately authorized pursuant to 18 Del. C. Chapter 65, Subchapter III;
2. The Plaintiff's claims are not subrogation claims, but the direct losses of the State for which recovery is sought; and
3. Failure to engage in Insurance Commissioner's Arbitration, if available, does not divest a court of subject matter jurisdiction.[11]

Appellees make the following arguments in answer to Appellant's appeal:

1. The Court of Common Pleas properly held that a self-insurer may not seek subrogation against an individual who had insurance coverage at the time of the accident; and
2. The court below correctly held that the Justice of the Peace Court lacked jurisdiction to decide subrogation disputes between self-insured entities and insurers.[12]

STANDARD OF REVIEW

Appeals from the Court of Common Pleas to this Court "shall be reviewed on the record and shall not be tried de novo."[13] The Superior Court's function when addressing an appeal from the Court of Common Pleas is similar to that of

[11] Appellant's Opening Br. ii. (Because of the basis on which this Court decides the matter, arguments two and three raised by Appellant are moot.)

[12] Appellees' Answering Br. i. (Because Appellees' arguments are in large part predicated on the assumption that the ICO is a self-insured entity, this Court makes no finding on the merits of each argument, and their arguments are moot. To the extent that Appellees' argument relies on the holding of *Waters v. United States*, 787 A.2d 71 (Del. 2001), it should be noted that the holding of *Waters* was a very limited one, and does not apply to the matter before this Court. *Waters* involved a government entity that itself was the tortfeasor. The Supreme Court noted that its analysis was narrowly crafted to avoid the unintended result of an uninsured motorist being "both relieved from paying insurance premiums and immune from any harm they caused to other motorists." *Id.* at 74. The Court was careful to explain that, although "the United States is not *technically* 'self-insured,'" it "can be considered the equivalent of a self-insured entity," "[f]or the limited purposes of this analysis[.]" Id. at 73 (emphasis added). Further, as Appellant pointed out, neither party in *Waters* raised the argument that §2118 did not apply to the State at all.)

[13] 10 Del C. § 1326(c).

the Delaware Supreme Court.[14] The Superior Court must limit its review to correcting errors of law and determining whether the lower court judge's factual findings "are adequately supported by the record and are the product of orderly and logical deductive process."[15] If a Court of Common Pleas decision is supported by sufficient evidence, it must be accepted by the Delaware Superior Court.[16]

DISCUSSION

The ultimate issue in this matter is whether the ICO is a self insured entity for the purposes of Section 2118.

When statutory language is clear and unambiguous on its face, no additional judicial interpretation is required and courts must not engage in further statutory construction.[17] A statute may be ambiguous because it is unclear on its face or because its application as the plain language is written would lead to an absurd result.[18] When the language of a statute is unambiguous, however, a court may not employ considerations of legislative intent or other extrinsic matters to arrive at a statutory meaning contrary to its plain meaning.[19] Stated differently, clear and unambiguous statutory language must be both a starting point and an ending point for a court's analysis.

Clear, unambiguous statutory language functions as notice to the people who must adhere to the terms of the statute.[20] An unambiguous statute is treated as

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[14] *Baker v. Connell,* 488 A.2d 1303, 1309 (Del.1985).
[15] *Romain v. State Farm Mutual Auto. Ins. Co.,* 1999 WL 1427801, at *1 (Del. Super. Ct. Dec.2, 1999) (citing *Wyatt v. Motorola, Inc.,* 1994 WL 714006, at *2 (Del. Super. Ct. Mar.11, 1994)).
[16] *Levitt v. Bouvier,* 287 A.2d 671, 673 (Del.1972).
[17] *See, e.g., Am. Ins. Ass'n v. Delaware Dep't of Ins.*, 2008 WL 44322 n.36 (Del. Super. Jan. 2, 2008) ("If a statute is unambiguous, there is no need for judicial interpretation, and the plain meaning of the statutory language controls.").
[18] *Avila-Hernandez v. Timber Products*, 2012 WL 1409538 *3 (Del. Super. 2012); *accord* Norman J. Singer and J.D. Shambie Singer, 2A Sutherland Statutes and Statutory Construction § 46:4 "Clear and unambiguous" statutes ("When a statute contains latent ambiguities despite its superficial clarity, the court may turn to legislative history or other aids for guidance.").
[19] Singer & Singer, *supra* note 18 ("[C]ourts are bound to give effect to the literal meaning [of a statute] without consulting other indicia of intent or meaning when the statutory text itself is "plain" or "clear and unambiguous.").
[20] Norman J. Singer and J.D. Shambie Singer, 2A Sutherland Statutes and Statutory Construction §45:8 Choice between "intent" and "meaning" ("Further support for the 'meaning' rule can also be found in constitutional principles which require, as a matter of due process, that laws be

giving effect to the intent of the legislature; its meaning evidences legislative intent.[21] In Delaware, "the goal of statutory construction is to determine and give effect to legislative intent."[22] Therefore, unambiguous language is conclusive evidence of the clear intent of the legislature.[23]

In the matter at issue here, because the language of the statute is clear and unambiguous on its face, the Court need not look beyond the statutory language itself to determine whether Section 2118 applies to the ICO.

Section 2118(a) explicitly refers to Section 2904 for the definition of "self insured,"[24] and by this means, adopts the other statute by reference.[25] This definition of "self insured" therefore appears to be intended to remain consistent through the entirety of Section 2118. A reading of Section 2904 further underscores the apparent intention of the legislature that the two sections are to be examined in tandem. Section 2904(b) holds that an application for self insurance from a "person" will be approved provided that certain criteria are satisfied.[26] The criteria specified refer to requirements under Section 2118.[27] The two statutes,

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communicated with sufficient definiteness to enable them to be understood by those who are subject to them.").

[21] *See, e.g., Rubick v. Security Instrument Corp.*, 766 A.2d 15, 18 (Del. 2000) ("The rules of statutory construction are well settled. The goal, in all cases, is to ascertain and give effect to the intent of the legislature**.** If the statute is unambiguous, there is no room for interpretation, and the plain meaning of the words controls."(internal emphasis omitted)).

[22] *See, e.g., Eliason v. Englehart*, 733 A.2d 944 (Del. 1999).

[23] *BCBSD, Inc. v. Denn*, 2008 WL 1838462 *5 (Del. Super. Apr. 22, 2008) ("[T]he wording of the statute demonstrates the legislature's intent.").

[24] 21 Del. C. §2118(a). ("[A] self-insurer pursuant to § 2904 of this title . . . .")

[25] *See, e.g. Dupont v. Mills*, 196 A. 168, 176 (Del. 1937) (quoting *Perkins v. Winslow*, 33 Del. 188, 133 A. 235 (Del. Super. 1926) ("The rule is recognized that a statute may adopt a part or all of another statute by a specific and descriptive reference thereto.")). *Accord*, Norman J. Singer and J.D. Shambie Singer, 2A Sutherland Statutes and Statutory Construction § 51:7 Statutes adopted by reference, 2012. ("Thus a statute may refer to another act and incorporate part or all of it by reference.").

[26] *See* 21 Del. C. § 2904.

[27] Section 2904 provides that:

> (b) The Secretary of Transportation may, in the Secretary's discretion, approve an application for self-insurance from such a person provided the following is submitted in satisfactory form:
> (1) A continuing undertaking by the owner or other appropriate person to pay tort liabilities or basic reparation benefits, or both, *and to perform all other obligations imposed by § 2118 of this title*;
> (2) Evidence that appropriate provisions exist for prompt and efficient administration of all claims, *benefits and obligations required by § 2118 of this title*; and

therefore, should be read together, as Appellant urges, in that both reinforce the fact that a self insurer is to be subject to 2118.

Finally, when the discussion involves a State-owned vehicle as does the matter now before the Court, the Court need not apply the three-part requirements of 2904. The General Provisions section of Chapter 29 (Motor Vehicle Safety—Responsibility) specifically provides that "[t]his chapter shall not apply with respect to any motor vehicle owned by . . . . this State."[28] The General Provisions section governs Section 2904, the specifications of which are explicitly intended to define the use of the phrase "self insured" in Section 2118.

Section 2118, therefore, does not apply to cars owned by the State, including to the State-owned police car involved in this matter. The Insurance Coverage Office was able to file a claim in any court of competent jurisdiction,[29] and its claim for trespass filed in the Justice of the Peace Court was proper. The matter is hereby **REVERSED** and **REMANDED** to the Court of Common Pleas for proceedings in accordance herewith.

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Richard R. Cooch, R.J.

cc: Prothonotary
Clerk, Court of Common Pleas

> (3) Evidence that reliable financial arrangements, deposits or commitments exist providing assurance for payment of tort liabilities or basic reparation benefits, or both, and all other obligations imposed by this chapter *substantially equivalent to those afforded by a policy of insurance complying with § 2118 of this title*."

Id. (emphasis added).

[28] 21 Del. C. § 2901.

[29] Appellant is incorrect in relying on 18 Del. C. § 6540 for this premise, however, because the express language of that statute refers to a dispute between a "claimant" and the Coverage Office. The use of the word "claimant" refers to a party having an administrative dispute with the ICO, as, for example, an insured would, and not to any party involved in any sort of dispute with the ICO.