IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR NEW CASTLE COUNTY

MARCIA LAFAYETTE,	)	
	)	
Plaintiff,	)	
	)	
v.	)	C.A. No. N12C-04-163 MMJ
	)	
BRYAN R. CHRISTIAN and TRIPLE J. TRUCKING, INC.,	)	
	)	
Defendants.	)	

Submitted: July 25, 2012
Decided: August 21, 2012

On Defendants' Motion to Dismiss for Failure to State a Claim GRANTED

OPINION

Leroy A. Tice, Esquire, Wilmington, Delaware, Attorney for Plaintiff

Arthur D. Kuhl, Esquire, Reger Rizzo & Darnall, LLP, Wilmington, Delaware, Attorney for Defendants

JOHNSTON, J.

This negligence action arises from a motor vehicle collision. Plaintiff Marcia LaFayette alleges that she sustained personal injuries after the vehicle she was riding in was struck by a tractor trailer operated by Defendant Bryan R. Christian. LaFayette also named Christian's employer – Triple J Trucking, Inc. ("TJT") – as a co-defendant.

Pursuant to Superior Court Rule of Civil Procedure 12(b)(6), Christian and TJT (collectively referred to as "Defendants") moved to dismiss LaFayette's Complaint. The Court held oral argument on the motion on July 25, 2012.

The issue is whether the statute of limitations has been tolled. Specifically, the parties dispute whether 18 *Del. C.* § 3914 requires a non-Delaware insurance company to provide notice of the applicable statute of limitations. This appears to be an issue of first impression.

FACTUAL AND PROCEDURAL CONTEXT

The facts of the case are relatively straightforward and undisputed. Christian is a truck driver for TJT, a North Carolina corporation with an insurance policy issued by a North Carolina company. On May 27, 2008, Christian was operating a tractor trailer for TJT on Interstate 95. The tractor trailer was registered in North Carolina. That same day, LaFayette, a Maryland resident, was riding as a passenger in a vehicle operated by Retha

Lawson. While travelling down Interstate 95, Lawson's vehicle was struck by the tractor trailer operated by Christian. The impact caused Lawson's vehicle to spin across the right lane before eventually colliding with a cement barrier. LaFayette sustained injuries as a result of the accident.

On April 18, 2012, LaFayette filed suit against Defendants, alleging negligence. LaFayette contends that Christian negligently operated the tractor trailer, and that TJT negligently screened, trained, and supervised Christian.

STANDARD OF REVIEW

When reviewing a motion to dismiss pursuant to Rule 12(b)(6), the Court must determine whether the claimant "may recover under any reasonably conceivable set of circumstances susceptible of proof."[1] The Court must accept as true all non-conclusory, well-pleaded allegations.[2] Every reasonable factual inference will be drawn in favor of the non-moving party.[3] If the claimant may recover under that standard of review, the Court must deny the motion to dismiss.[4]

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[1] *Spence v. Funk*, 396 A.2d 967, 968 (Del. 1978).

[2] *Id.*

[3] *Wilmington Sav. Fund. Soc'y, F.S.B. v. Anderson*, 2009 WL 597268, at *2 (Del. Super.) (citing *Doe v. Cahill*, 884 A.2d 451, 458 (Del. 2005)).

[4] *Spence*, 396 A.2d at 968.

DISCUSSION

The parties agree that the applicable statute of limitations for this action is two years and that LaFayette's action was filed more than two years after the collision.[5] It is equally undisputed that Defendants never gave LaFayette notice of the applicable statute of limitations. The parties, however, dispute: (1) whether 18 *Del. C.* § 3914 requires Defendants to provide LaFayette with notice of the applicable statute of limitations; and (2) whether Section 3914 applies to an out-of-state insurer.

Section 3914's Notice Requirement

Pursuant to 18 *Del. C.* § 3914:

> 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.

The statute is "an expression of legislative will to toll otherwise applicable time limitations with respect to claims made against insurers."[6] An insurer who fails to comply with Section 3914's notification requirement is estopped from asserting the statute of limitations defense against the

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[5] *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 ….").

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

claimant.[7] Further, the insurer's obligations under Section 3914 cannot be waived through the claimant's actions.[8]

Defendants Are Not Insurers

Section 3914 does not distinguish between independent insurers and self-insurers.[9] As explained by the Delaware Supreme Court:

> Insurance, in its basic operation, involves the setting aside of money to establish a fund sufficient to respond to claims arising from predictable risks. Whether the funding be through contract with an independent insurer, or self-funding, or a combination of the two through partial self-insurance in the form of deductibles, the result is the same. A fund is created to protect against risk of bodily harm or property damage.[10]

As such, a claimant, for whose benefit the fund has been established, is entitled to the same notice from a self-insurer as that received from an independent insurer.[11]

However, the Court finds that Defendants are neither insurers nor self-insurers for purposes of 18 *Del. C.* § 3914. The record establishes that TJT is a commercial trucking company, and Christian is an individual employed by TJT as a truck driver. It is undisputed that neither Christian nor TJT is in

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[7] *Fleming v. Perdue Farms, Inc*., 2002 WL 31667335, at *2 (Del. Super.).

[8] *Mullin v. W.L. Gore & Assoc*., 2006 WL 1704095, at *2 (Del. Super.).

[9] *Stop & Shop Cos.,* 619 A.2d at 898.

[10] *Id.* (internal citations omitted).

[11] *Id.*

the business of entering into contracts for insurance, or setting aside money to "fund" the payment of claims that may be asserted against them.[12] Therefore, Defendants are not "insurers" subject to Section 3914's notice requirement.

To impose Section 3914's notice requirement on Christian and TJT, neither of whom bear any affiliation with the insurance industry, would not be consistent with the purpose underlying Section 3914. As this Court previously explained in *Taylor v. Bender*[13]:

> The requirements of [Section] 3914 are designed to provide claimants with notice of the applicable statute of limitations. The burden placed on insurers is not an onerous one and conforms to a readily discernible rational social policy considering the relative knowledge and position of the parties. Insurance companies are likely to be aware of laws and regulations applicable to their business. A claimant, on the other hand, is not. Concern over the possibility of a sophisticated insurance industry overreaching a less sophisticated claimant is legitimate and reasonable.[14]

It is clear that Section 3914 was intended to "protect unsophisticated claimants from more sophisticated *insurance companies*."[15]

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[12] *See Farm Family Ins. Co. v. Conectiv Power Delivery*, 2008 WL 2174411, at *3 (Del. Super.).

[13] 1991 WL 89882 (Del. Super.).

[14] *Id.* at *2.

[15] *Farm Family Ins. Co.*, 2008 WL 2174411, at *4 (emphasis added).

Although the insurer may be estopped from asserting the statute of limitations as an affirmative defense, the tortfeasor remains free to raise the defense. In other words, 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.[16]

Therefore, in the case *sub judice,* Defendants, as tortfeasors, are entitled to raise the statute of limitations as an affirmative defense. The Court finds that because LaFayette's Complaint was filed more than two years after the accident, it is statutorily barred. Therefore, LaFayette's Complaint must be dismissed.

Section 3914 Does Not Apply

Even assuming that Defendants are "insurers," which they are not, they would not be subject to Section 3914's notice requirement. The plain language of 18 *Del. C*. § 3901 makes clear that Section 3914's notice requirement extends only to "contracts of casualty insurance covering

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[16] As a practical matter, the Court notes that 18 *Del. C*. § 3914 is implicated only when the casualty insurance provider is a party to the litigation. However, it is well-settled Delaware law that an injured party may not maintain a direct action against an insurer for the negligent acts of its insured. *Delmar News, Inc. v. Jacobs Oil Co*., 584 A.2d 531, 533 (Del. Super. 1990). "The rationale behind this rule appears to be simply that the Courts feel that it would not be sound public policy to permit an insurer to be joined as a defendant in an action grounded upon the acts of the insured." *Id.* It appears to the Court that tolling of the statute of limitations pursuant to Section 3914 only comes into play in subrogation claims, and does not apply in negligence actions in which the insurer is not a party. The Court, however, need not resolve that issue.

subjects resident, located or to be performed in [] [Delaware]."[17] Therefore, Section 3914 does not apply to out-of-state insurers issuing any policy covering a non-Delaware resident, non-Delaware property, or activities to be performed outside of Delaware.

Had the Legislature intended for out-of-state insurers to be included within the scope of Section 3914, it could have included the specific necessary language in Section 3901 and/or Section 3914. The Court may infer that omission of any reference to out-of-state insurers, or non-Delaware policies, was intentional.[18]

CONCLUSION

Because Defendants are neither insurers nor self-insurers, Defendants are not subject to the notice requirement of 18 *Del. C.* § 3914. Therefore, Defendants are entitled to raise the statute of limitations as a defense to

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[17] 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.").

[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 accident 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.

LaFayette's action. The Court finds that LaFayette's Complaint, filed nearly four years after the accident, is untimely.

THEREFORE, Defendants' Motion to Dismiss is hereby **GRANTED.**

IT IS SO ORDERED.

/s/ *Mary M. Johnston*
The Honorable Mary M. Johnston