SUPERIOR COURT
OF THE
STATE OF DELAWARE

RICHARD F. STOKES
JUDGE

1 THE CIRCLE, SUITE 2
SUSSEX COUNTY COURTHOUSE
GEORGETOWN, DE 19947

December 30, 2009

Michael L. Sensor, Esquire
Perry & Sensor
P.O. Box 1568
Wilmington, DE 19899

Joseph C. Monahan, Esquire
Whitney W. Deeney, Esquire
Saul Ewing, LLP
P.O. Box 1266
Wilmington, DE 19899

Re: ***Jadczak v. AIG Marketing, Inc. et al.***
C.A. No. 08C-05-028-RFS

Dear Counsel:

Following oral argument on December 29, 2009, summary judgment was issued in favor of AIG Marketing, Inc. ("AIGM"). The background of this case is set forth in a memorandum opinion of April 20, 2009. Among other points, it found that the three year statute of limitations began to run on August 16, 2005.

The Plaintiffs were given a period of discovery to see if the adding of AIGM to the amended complaint filed on September 2, 2008 would relate back to the date of the filing of the original suit on May 23, 2008. If so, the claim would not be barred by the statute of limitations.

Super. Ct. Civ. R. 15(c) provides:

> An amendment of a pleading relates back to the date of the original pleading when: (1) relation back is permitted by the law that provides the statute of limitations applicable to the action, or (2) the claim or defense applied in the amended pleading arose out of the conduct, transaction, or occurrence set forth or attempted to be set forth in the original pleading, or (3) the amendment changes the party or the naming of the party against whom a claim is asserted if the foregoing provision (2) is satisfied and within the period provided by statute or these rules for service of the summons and complaint, the party to be brought in by amendment (A) has received such notice of the institution of the action that the party will not be prejudiced in maintaining a defense on the merits, and (B) knew or should have known that, but for the mistake concerning the identity of the proper party, the action would have been brought against the party. (Emphasis added.)

Moorehead v. City of Wilmington, 2003 WL 23274848, *2 (Del. Super. Ct. Dec. 17, 2003).

Plaintiffs failed to satisfy their burden of proof to permit relation back under (3)(A) and (B). AIGM did not receive any notice of the suit filed on May 23, 2008 until the amended complaint was served on the Delaware Insurance Commissioner on October 1, 2008, more than three years after the date of injury. Although given the opportunity for discovery, no evidence suggests that AIGM knew or should have known that but for the mistake concerning the identity of the proper party, it would have been sued.

Plaintiffs argue that AIGM's parent corporation, American International Group, Inc. ("AIG") had knowledge about the alleged underinsurance coverage problem, and this knowledge should be imputed to AIGM. This is mere speculation. The documents relied upon for this assertion (AIGM001-0014) merely reflect that Homesite Insurance Company ("Homesite") was Plaintiffs' new insurer when AIG did not renew its policy. At the time of the fire loss, Homesite had responsibility under its policy. Nothing in these documents hint that there was an underinsurance dispute or request by Plaintiffs for different coverage.

Homesite adjusted the claim which later resulted in litigation in the Federal District Court. Plaintiffs settled with Homesite but did not pursue an underinsurance claim. Nor could such a suit have been successfully maintained. A plain reading of the materials provided to Plaintiffs when Homesite replaced AIG showed limited coverage for other structures, such as the hanger.

Furthermore, the imputations of the actions of a parent company to a subsidiary is a "dubious proposition." *See Sprint Nextel Corp. v. iPCS, Inc.,* 2008 WL 2737409, (Del. Ch. Ct. July 14, 2008).

Considering the foregoing, summary judgment is entered in favor of AIGM.

IT IS SO ORDERED.

Very truly yours,

Richard F. Stokes

RFS/cv
cc: Prothonotary
Michael R. Smith, Esquire
Walter D. Wilson, Esquire