

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR SUSSEX COUNTY

MARY ANN SAMMONS and TERRY)
W. SAMMONS, on behalf of them-)
selves and all others similarly situated.)
Plaintiffs,)
v.) C.A. No. S09C-12-026 RFS
HARTFORD UNDERWRITERS)
INSURANCE COMPANY,)
Defendant.)

MEMORANDUM OPINION

Defendant's Motion for Summary Judgment. Denied.

Submitted Date: August 6, 2010
Decided Date: August 23, 2010

John S. Spadaro, Esquire, John Sheehan Spadaro, LLC, Hockessin, Delaware,
Attorney for Plaintiffs.

James D. Taylor, Esquire, Saul Ewing LLP, Wilmington, Delaware, Attorney
for Defendant.

STOKES, J.

The issue in this case is whether Defendant Hartford Underwriters Insurance Company paid PIP claims related to Plaintiff Mary Ann Sammons' and Plaintiff Terry W. Sammons's automobile accident within the 30-day period required pursuant to 21 *Del. C.* § 2118B(c).¹ In their class action Complaint, Plaintiffs seek recovery of statutory interest on late paid claims, compensatory damages, punitive damages and declaratory judgment, as well as fees and costs. The proposed class of plaintiffs includes those of Hartford's Delaware insureds who from December 22, 2006 to the present, submitted covered PIP claims to Hartford that were paid after the expiration of the 30-day period.

Defendant has moved for summary judgment on all counts in the Complaint, arguing that there are no disputed issues of material fact and that Hartford is entitled to judgment as a matter of law. For the reasons explained below, the motion is denied.

¹The pertinent portions of § 2118B(c) provide as follows:

When an insurer receives a written request for payment of a claim. . . the insurer shall promptly process the claim and shall, no later than 30 days following the insurer's receipt of said written request for first-party insurance benefits and documentation that the treatment or expense is compensable pursuant to § 2118(a) of this title, make payment of the amount of claimed benefits that is due to the claimant. . . . If an insurer fails to comply with the provisions of this subsection, then the amount of unpaid benefits due from the insurer to the claimant shall be increased at the monthly rate of:

- (1) One and one-half percent from the 31st day through the 60th day; and
- (2) Two percent from the 61st day through the 121st day; and
- (3) Two and one-half percent after the 121st day.

Facts. As alleged in the Complaint, the facts are as follows. Plaintiffs were injured in a car collision in Sussex County, Delaware, on December 22, 2006. Plaintiffs were both named insureds under a Hartford automobile policy, effective from December 14, 2006, through December 14, 2007. At the time of the accident, Plaintiffs were driving a 2002 Kia Optima, which was covered by the Hartford policy.

Following the accident, the Plaintiffs received health care from Kent Diagnostic Radiology Associates (“KDRA”) and Physical Therapy Services (“PTS”). Plaintiffs and their health care providers submitted claims to Hartford. Coverage is not disputed.

The Complaint avers that Hartford routinely fails to pay covered PIP claims within the statutory 30-period. The Complaint also avers that Hartford routinely ignores its obligation to pay the statutory interest for late paid claims. The Complaint also alleges that this action may properly be maintained as a class action pursuant to Super. Ct. Civ. R. 23.

The Complaint alleges five counts. Count I seeks a declaratory judgment that under Delaware law and under the insurance contracts of proposed class members, Hartford was required to pay covered PIP claims within the 30-day time frame prescribed by 21 *Del. C.* § 2118B. Count II alleges a claim for breach of contract. Count III alleges a claim for bad faith breach of contract. Count IV alleges a claim for a breach of the duty of good faith and fair dealing. Count V alleges a claim for

consumer fraud pursuant to the Delaware Consumer Fraud Act. The Complaint seeks an unspecified amount of compensatory and punitive damages, as well as costs and attorneys' fees.

The parties' contentions. On summary judgment, Hartford argues that it is an undisputed fact that Hartford paid all of the Sammons' PIP claims within the 30-day statutory time frame. Hartford argues that this issue is dispositive of all counts alleged in the Complaint, but does not address each count individually. In support of its position, Hartford offers the affidavit of Roberto Sirica, Northeast Personal Lines Claim Center Manager for Hartford. The affidavit avers that payment of each of Plaintiffs' PIP claims was made no later than 30 days following receipt of the invoice. Hartford also offers a table reflecting dates that invoices were received and dates of payment. The table is keyed to the relevant paragraphs in the Sirica affidavit. The affidavit in turn refers to Exhibits A through W, which offer copies of (1) invoices received for each PIP claim, (2) internal notes of payment details and (3) bills paid.

In response, Plaintiffs argue that the record shows at least four claims illustrating the unreliability of Hartford's records. Plaintiffs assert that discovery is necessary in order to complete the record. Plaintiffs offer the Affidavit of Dawn A. Williamson, in their personal injury claim. Ms. Williamson avers that she obtained a copy of Hartford's chronological payment log for the Sammons' PIP claims; that she obtained billing and payment records from KDRA and PTS; that she confirmed

certain dates with said providers; and that she identified a discrepancy in one of the claims, attesting to the unreliability of Hartford's records. Included with Plaintiff's opposition are copies of Hartford's PIP billing summaries for both Plaintiffs, as well as billing summaries from PTS and KDRS.

Discussion. Although Plaintiffs allege that Hartford's record-keeping is not reliable, this is not the dispositive issue, unless the records raise questions of material fact that bills were not timely paid. Compliance with the 30-day statutory time frame set forth in 21 *Del. C.* § 2118B(c) is the dispositive issue. Plaintiffs' challenges to specific claims are discussed below.

1. A bill for Mr. Sammons' treatment on March 2, 2007. Plaintiffs argue that PTS records show that the bill was sent March 19, 2007, a full month before Hartford claims having received it. Hartford asserts that a typographical error existed in the first Sirica affidavit, mistakenly providing the date of payment for the date of receipt. The supplemental Sirica affidavit asserts that the PTS invoice was received by Hartford on March 23, 2007 and timely paid on April 20, 2007.²

In Ex. R to Hartford's motion, Hartford has provided the documentation concerning this claim. Page "Hartford 000098" of Ex. R shows that the PTS invoice was received by Hartford on March 23,

²Hartford's Reply, Ex. 1.

2007, as asserted in the Reply and the Sirica's supplemental affidavit. Further, page "Hartford 000099" provides a copy of the payment check, issued on April 20, 2007. Viewing the evidence in the light most favorable to Plaintiffs, the Court finds that no question of material fact exists as to whether this bill was timely paid. The record shows that it was. Further discovery would not change this result.

2. A bill for Mr. Sammons' treatment at KDRA on December 29, 2006. Plaintiffs assert that the bill was mailed on January 30, 2007, yet Hartford claims to have received the bill on February 15, 2007. Plaintiffs argue that this alleged length of time for mail delivery indicates that Hartford's records are less than reliable and call for elaboration through discovery. Hartford asserts that the bill was timely paid on February 15, 2007.

Hartford's records for this claim indicate that the KDRA invoice was received on February 15, 2007 (Ex. I, "Hartford 000057") and that payment was made on the same day (Ex. I, "Hartford 000058"). Again, Plaintiffs challenge the reliability of Hartford's records. Plaintiffs offer the Williamson affidavit, which avers that Williamson was informed by a KDRA representative that KDRA mailed the invoice to Hartford on January 30, 2007. Even accepting this assertion as true, the parties do not dispute the fact that payment was made by Hartford on February 15,

2007. There is no issue of material fact in regard to the timeliness of Hartford's payment of this claim.
3. A bill for Mrs. Sammons' treatment at KDRA on April 9, 2007 and April 12, 2007. Plaintiffs argue that the Sirica affidavit concedes that Hartford has no record of the date it received the invoice, thus exhibiting the unreliability of Hartford's records. Plaintiffs argue that the PIP log shows that the bill was not paid until June 15, 2007. Hartford argues that Plaintiffs have confused the dates for treatment of Mrs. Sammons with dates for treatment of Mr. Sammons. According to Hartford, payment for Mrs. Sammons' treatment was timely made on May 15, 2007, and payment for Mr. Sammons' was timely made on June 15, 2007.

The record supports Hartford's contention as to Mr. Sammons. Hartford Ex. Q shows that Mr. Sammons received treatment from PTS on April 9th and 12th, 2007. The PTS invoice is dated April 17, 2007. Although the Hartford record does not offer a date upon which the invoice was received, Hartford's check is dated May 15, 2007. The PIP log submitted by Plaintiffs indicates that the invoice was sent April 17, 2007, and payment was received May 18, 2007.³ As to the bill for Mr. Sammons' treatment from April 9th and 12th, 2007, Plaintiffs have not

³Plaintiff's Opposition, Ex. B, page SAM2.

raised an issue of material fact. Rather, they confused the dates for Mr. Sammons' treatment with the dates for Mrs. Sammons.

However, the Hartford record shows that Mrs. Sammons received treatment at PTS on the same dates, that is, April 9th and April 12th, 2007. The PTS invoice is dated April 17, 2007, but Hartford alleges that it received a fax including a bill for these services on June 14, 2007 and paid the bill on June 15, 2007. The PIP log submitted by Plaintiffs indicates that the invoice was sent April 17, 2007, and that payment was received June 20, 2007.⁴ Thus, there are questions of material fact as to when Hartford received the invoice dated April 17, 2007 and whether the fax dated June 14, 2007 was the first receipt of this bill. The answer to these questions will determine whether the bill was timely paid. Thus, a question of material fact has been raised.

4. A bill for Mrs. Sammons' treatment from KDRA on January 2, 2007, which was billed to Hartford on January 8, 2007. Plaintiffs allege that Hartford has no record at all regarding this bill. Hartford argues that Plaintiffs have misread the records. Hartford alleges that Mrs. Sammons received this treatment on December 29, 2006, that Hartford received the bill on February 6, 2007, and paid the bill on February 9, 2007.

⁴Pl.'s Opp., Ex. B, SAM6.

The KDRA records presented in Plaintiffs' Opposition, Ex. E show that KDRA billed Hartford for Mrs. Sammons' treatment on January 8, 2007. The KDRA record does not indicate an amount charged or a date of payment. Hartford argues that Plaintiff has misread the records. The question raised by the parties' submissions is whether they are disputing the same treatment. Hartford asserts that the correct treatment date is December 29, 2006; that Hartford received an invoice from KDRA for \$112 on February 6, 2007 and paid the bill in its entirety on February 9, 2007.⁵ On the record in its current form, it is not possible to determine whether these records refer to the same treatment or to different treatments. Plaintiffs have not shown that the KDRA records refer to the same claim referenced by Hartford, but Plaintiffs have raised a question of material fact that cannot be resolved on this record.

Summary judgment is appropriate only where no genuine issues of material fact are present, and the moving party is entitled to prevail as a matter of law.⁶ Summary judgment should be denied where it appears desirable to inquire more

⁵Hartford Motion for Summary Judgment, Ex. G.

⁶*Burkhart v. Davies*, 602 A.2d 56 (Del. 1991), *cert. denied*, 504 U.S. 912 (1992).

thoroughly into the facts in order to clarify application of the law.⁷ Although Plaintiffs have challenged only four of the bills, two of these challenges raise questions of material fact that are not possible to answer on the current record. Plaintiffs argue that there are other gaps and inconsistencies in the pre-discovery record, which can only be assessed upon discovery. The Court finds that further inquiry into the facts is necessary. Viewing the facts in a light most favorable to the non-moving party,⁸ Hartford's motion for summary judgment is **DENIED**.

IT IS SO ORDERED.

Richard F. Stokes

⁷*AeroGlobal Capital Management, LLC v. Cirrus Indus., Inc.*, 871 A.2d 428, 444 (Del. 2005).

⁸*Id.*