IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY

STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY,	)	
Respondent Below Appellant.	)	
v.	)	**C.A. No. 09C-02-140 MJB**
ROBIN E. CIAMARICONE	)	
Claimant Below Appellee.	)	

Submitted: January 14, 2011
Decided: March 3, 2011

Upon Appellant's and Appellee's Cross Motions for Summary Judgment.
Appellant's Motion **GRANTED**.
Appellee's Motion is **DENIED**.

OPINION AND ORDER

Sherry Ruggiero Fallon, Esq., Tybout, Redfearn & Pell, Wilmington, Delaware. Attorney for Respondent- Below, Appellant.

Michael Silverman, Esq., Silverman, McDonald & Friedman, Wilmington, Delaware. Attorney for Claimant- Below, Appelle.

BRADY, J.

INTRODUCTION

This is an insurance coverage dispute between State Farm Mutual Automobile Insurance Company ("State Farm") and its insured, Robin E. Ciamaricone, who seeks reimbursement for medical expenses. The Delaware Insurance Department Automobile Arbitration Panel ("Panel") previously resolved this matter in favor of Ciamaricone. On February 13, 2009, State Farm filed an appeal in this Court for a *de novo* review of the Panel's decision. The parties have filed cross-motions for summary judgment.[1] For the reasons set forth in this Opinion, State Farm's Motion for Summary Judgment is **GRANTED**, and Ciamaricone's Motion for Summary Judgment is **DENIED**.

FACTUAL BACKGROUND[2]

On May 3, 2005, and March 28, 2006, Ciamaricone was involved in two separate automobile accidents, in which she sustained injuries to her neck, back and lower extremities.[3] At all times relevant to this action, Ciamaricone was insured by her State Farm policy, which provided for personal injury protection ("PIP") benefits. As a result of her injuries, Ciamaricone received medical treatment, and consequently, incurred medical expenses.

On September 5, 2008, Ciamaricone filed an Insurance Department Arbitration Petition, in which she demanded reimbursement for three medical bills: Christiana Care

[1] State Farm filed its Motion for Summary Judgment on November 4, 2010. The next day, Ciamaricone filed her Cross-Motion for Summary Judgment. On December 2, 2010, State Farm filed its Response to Ciamaricone's Motion. On December 9, 2010, this Court held a hearing, and instructed Ciamaricone to file supplemental submissions with case law and applicable statutes to support her claim.[1] No such submissions were filed. Therefore, the Court will resolve the issues in this case based upon the record before it.

[2] The facts set forth in this Opinion are not in dispute.

[3] Compl. 3. Additionally, Appellee's medical record indicates a prior shoveling accident in January of 2000, for which the Appellee received medical treatment and lumbar spine surgery in March of 2003.

("CC Bill"), Christiana Care Spine Consultants ("CCSC Bill") and Anesthesia Services ("AS Bill"), totaling $20,174.49.[4] On January 20, 2009, the Panel awarded Ciamaricone $10,307.78.[5] On February 13, 2009, State Farm filed a Notice of Appeal in this Court. On June 12, 2009, Ciamaricone filed her Complaint on Appeal, in which she alleged that State Farm breached its insurance contract when it refused to provide PIP benefits coverage, and seeks reimbursement for all three medical bills.

From approximately 2005 to 2008, Ciamaricone made several claims for PIP benefits on her policy with State Farm, many of which were paid by State Farm and attributed to either the May 3, 2005 or the March 28, 2006 accident.[6] All three medical bills at issue in this case relate to a spinal surgery performed by Dr. J. Rush Fisher on December 2, 2006. Of the three bills, only the CCSC Bill, totaling $9,318.00, was submitted to State Farm prior to the Arbitration Petition.[7] The remaining two bills were not received by State Farm until September 18, 2008.[8]

Importantly, Dr. Fisher stated, with regard to the spinal surgery, it is "next to impossible for me to apportion her initial spinal pathology to a May of 2005 versus a March of 2006 trauma."[9] The record, otherwise, is absent of any medical testimony that is able to attribute any portion of Ciamaricone's spinal injury, and consequently her expenses, to one accident as opposed to the other. The deadline for expert reports established in the Trial Scheduling Order was January 15, 2010. No other expert has

[4] Appellant Mot. for Sum. Judg., Ex. 4 and 5 to Ex "B" (Affidavit of Edea Barilo).
[5] *Id.*, see also Notice of Appeal, Ex. A. The Arbitration panel apparently awarded the Appellee the total amount requested, minus the amount that would be precluded by "double claiming" on amounts paid by insurance, *see supra* note 11.
[6] Appellant Mot. for Sum. Judg., Ex. 6 to Ex "B" (Affidavit of Edea Barilo)
[7] *Id.*
[8] *Id.*
[9] Appellant Mot. for Sum. Judg., Ex. D and E to Ex. "A".

been identified by Plaintiff, and thus, no opinion other than that of Dr. Fisher would be available at trial.[10]

PARTIES' CONTENTIONS

State Farm contends that it is entitled to summary judgment as a matter of law for three reasons. First, it contends that Ciamaricone failed to submit and support her claim for medical expenses within twenty-seven months of either accident as required by 21 *Del. C*. § 2118(a)(2). Second, State Farm contends that Ciamaricone cannot prove that the expenses for the lumbar spine surgery were proximately caused by either of the motor vehicle accidents. Third, State Farm argues that Ciamaricone lacks standing to recover any portion of her medical bills that were paid by her health insurance carrier.

In support of her cross-motion for summary judgment, Ciamaricone contends that she suffered injuries while her State Farm automobile policy was in effect, and that State Farm's failure to provide coverage to her was a breach of the insurance contract. In addition, Ciamaricone contends that her expert disclosures sufficiently establish causation between the accidents and the resulting claim for PIP benefits. Moreover, Ciamaricone argues that the fact that no expert was able to apportion the cause of her injuries as between the two accidents does not change the fact that both accidents occurred while she was covered by her State Farm insurance policy.

In response to Ciamaricone's Cross-Motion for Summary Judgment, State Farm contends that Ciamaricone's brief fails to address the burden of proof as to the reasonableness, necessity and casual relationship of the treatment to each of the accidents in question. In addition, State Farm contends that Ciamaricone has failed to cite any

[10] Trial Scheduling Order, Aug. 19, 2009.

authority in opposition to its claim that Plaintiff's claims were not within twenty seven months as required by the Delaware Code.

SUMMARY JUDGMENT STANDARD

Summary judgment may only be granted when the record demonstrates that there is no genuine issue as to any material fact, and that the moving party is entitled to judgment as a matter of law.[11] In addressing a motion for summary judgment, the evidence must be considered in a light most favorable to the non-moving party, and if there remains a genuine issue of material fact, summary judgment must be denied.[12] When parties file cross-motions for summary judgment, as they have in this case, the standard of review is unchanged.[8]

DISCUSSION

1. PIP Expenses Must Be Submitted Within Twenty Seven Months

Pursuant to 21 *Del.C.* §2118(a)(2)i.2., PIP expenses "shall be submitted to the insurer as promptly as practical, in no event more than 2 years after they are received by the insured." Expenses which were "incurred within the 2 years but which have been impractical to present to an insurer within the 2 years shall be paid if presented within 90 days after the end of the 2- year period."[13] Generally, the additional ninety day period has been liberally interpreted to allow a full ninety day extension without requiring

[11] Super. Ct. Civ. R. 56(c).
[12] *Gutridge v. Iffland*, 889 A.2d 283 (Del. 2005).
[13] 21 *Del.C.* §2118(a)(2)i.2.

claimants to demonstrate "impractical[ity]."[14] However, the statute is clear, there are no circumstances under which an insured may submit a claim to the insurer after two years and ninety days.

In this case, there are two accidents (May 3, 2005 and March 28, 2006) from which to begin the two year and ninety day term for the three medical expense bills in question. State Farm received the CCSC Bill in May 2008, which is within twenty seven months of only the March 28, 2006 accident. Thus, Ciamaricone cannot recover any portion of the expenses in the CCSC Bill that are related to the May 3, 2005 accident. The remaining two bills, the CC Bill and the AS Bill, were received by State Farm with Ciamaricone's Arbitration petition on September 18, 2008, which is beyond the required twenty seven month period. Therefore, only medical expenses included in the CCSC Bill that were proximately caused by the March 28, 2006 accident are recoverable.[15]

2. Proximate Cause

To recover for the portion of expenses in the CCSC Bill that relate to the March 28, 2006 accident, Ciamaricone must demonstrate that, as a matter of law, the expenses were proximately caused by the March 28, 2006 motor vehicle accident. Pursuant to 21

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[14] However, this Court has, in previous cases, interpreted that language to require a Claimant to demonstrate hardship or impractical circumstances that prevented them from submitting expenses to the insurer in order to qualify for a ninety day extension.See *State Farm Mut. Auto. Ins. Co. v. Smith*, 2000 WL 1211153, at *2-3, c.f. *Hayman v. Govt. Employees Ins. Co.*, Del. Super. C.A. No. 07C-12-106, Silverman, J. (Dec. 23, 2008) (denying claimant from utilizing ninety day extension where claimant failed to demonstrate on the record any hardship that justifies earlier failure to claim within the 2-year statutory period).

[15] Ciamaricone has failed to present a legal defense to her untimely bill submission, and instead relies upon the general principle that the "fundamental purpose of [PIP insurance] is to compensate persons injured in automobile accidents."[15] She further claims that it is the "obvious purpose of Delaware's no-fault statute, 21 *Del. C.* § 2118, to impose on the no-fault carrier – here State Farm – not only primary, but ultimate, liability for the payment of the injured party's covered medical bills to the extent of the carrier's PIP protection benefits."[15] Finally, she contends that "Section 2118 is entitled to liberal construction in order to achieve this purpose."[15] These general guiding principals notwithstanding, Appellant has failed to provide any authority for this Court to interpret the clear language of 21 *Del. C.* § 2118 in any way other than to preclude claims submitted after the two year and ninety day period.

Del.C. §2118(a)(2)i.2,. "[p]ayments of expenses…shall be made as soon as practical after they are received during the period of 2 years from *the accident* [emphasis added]." State Farm contends that Ciamaricone cannot show which *accident* caused the injury, or if both, to what extent the injury is related to the March 28, 2006 accident as opposed to the May 3, 2005 accident. State Farm contends that Ciamaricone's claim for relief must fail, because Ciamaricone cannot prove that any of the expenses in CCSC Bill were proximately caused by the later accident as opposed to the earlier one. If related only to the earlier accident, the claim would be untimely pursuant to 21 *Del.C.* §2118(a)(2)i.2.[16]

In this case, Ciamaricone's surgeon, Dr. Fisher, is unable to determine which accident was the proximate cause of the need for the surgery, the expense of which is reflected in the CCSC Bill. Furthermore, Ciamaricone has not proffered any other expert opinion to support a claim that any portion of the expenses in the CCSC Bill are related to the March 28, 2006 accident. The deadline in the Trial Scheduling Order to obtain expert opinions was January 15, 2010.[17] Therefore, Ciamaricone is unable to present an expert opinion to a jury. Without expert testimony, the jury would have no guidance and would be required to speculate whether or not any expenses in the CCSC Bill relate to the later accident as opposed to the earlier accident. If the expenses were proximately caused by the earlier accident, then the entire CCSC Bill was untimely submitted. Without an expert opinion, Ciamaricone cannot carry her burden of proof required at trial, and State Farm's Motion with respect to the CCSC Bill is granted.

[16] Although a PIP cause of action is based on breach of contract claim, its presupposition on tortious events sometimes requires a Court to analyze the underlying tort, such as in the instant case, for proximate causation.
[17] Trial Scheduling Order, Aug. 19, 2009.

3. Standing- Double Recovery

State Farm contends that Ciamaricone does not have standing to recover for expenses related to the CC Bill because she has already received payments from her health insurer. However, as previously decided, Ciamaricone's submission of the CC Bill was outside of the two year and ninety day statutory time frame, and therefore, the issue of double recovery is moot.

CONCLUSION

For the foregoing reasons, the Court finds Ciamaricone failed to timely submit the CC and AS Bills, and therefore, State Farm's Motion for Summary Judgment is **GRANTED**, and Ciamaricone's Motion is **DENIED**, as to any claims related to those bills. With respect to the CCSC Bill, the Court finds that Ciamaricone is unable to prove whether any of the expenses in that Bill were proximately caused by the March 28, 2006 accident. Therefore, State Farm's Motion related to that bill is **GRANTED**.

IT IS SO ORDERED.

M. Jane Brady
Superior Court Judge