IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR SUSSEX COUNTY

RICHARD MURPHY JR. Plaintiff,	)	
v.	)	**C.A. No. 04C-10-005 RFS**
THOMAS LUCAS AND LORETTA LUCAS Defendants,	)	

Date Submitted: February 8, 2006
Date Decided: April 28, 2006

ORDER

Defendants have filed a Motion for Summary Judgment stating that Plaintiff's case is barred by the statute of limitations. The Motion is denied.

BACKGROUND

On October 14, 2001, Richard Murphy ("Plaintiff") was injured while staying at Thomas and Loretta Lucas' ("Defendants") beach house. Defendants' beach house had bicycles that Plaintiff was authorized to use. While riding one of these bikes, Plaintiff was struck by a car and received multiple injuries. Plaintiff alleges that Defendants were aware that the bicycle was defective, and should have disclosed this defect to him. Basically, the claim is that the chain slipped, which prevented the Plaintiff's acceleration of the bike and his inability to avoid a collision while crossing a highway.

In a separate action, Plaintiff sued the driver of the automobile that struck him.[1] According to Plaintiff, he had informed Defendants that he was hoping to recover for his injuries from the driver. Defendants passed the bicycle accident information along to their insurance company.

On October 6, 2004, Plaintiff filed a *pro se* complaint against Defendants. This complaint was amended in its entirety on February 10, 2005, after Plaintiff retained counsel. Defendants then filed a Motion for Summary Judgment on February 15, 2005, asserting that Plaintiff's case was barred by the two year statute of limitations for personal injury actions, 10 *Del. C.* §8119. While suit was filed beyond the statute of limitations period, Plaintiff contends that the statute does not apply. The primary argument is that his claim was pending with Defendants' liability insurance carrier, and the carrier failed to provide written notice about the statute of limitations as required by 18 *Del. C.* § 3914.

STANDARD OF REVIEW

Summary judgment cannot be granted where material issues of fact exist; only a jury can resolve them. *Moore v. Sizemore*, 405 A.2d 679, 680 (Del. 1979). The moving party must establish the lack of material factual issues. *Id*. Should the moving party show the absence of material factual issues, the nonmoving party must prove the presence of such issues in order to prevent summary judgment. *Id*. at 681. In consideration of a motion for summary judgment, the evidence is viewed in a light most favorable to the nonmoving party. *Id*. at 680. Where the moving party has produced sufficient evidence under Rule 56, the non-moving party may not rely solely upon her pleadings. *Id*. Evidence must be produced showing a material issue of fact. *Steffen v. Colt Industries*, 1987 WL 8689, *3

[1] *Murphy v. Smidt*, No 02C-04-115 JEB. Smidt was successful at arbitration in 2003, and the case was not pursued further.

(Del. Super. Ct.) (citing *Celotex Corp. v. Catrett*, 477 U.S. 317, 322-323 (1986)). Summary judgment is not appropriate if the Court determines that it does not have sufficient facts to enable it to apply the law. *Reese v. Wheeler*, 2003 WL 22787629, * 2 (Del. Super. Ct.) (citing *Ebersole v. Lowengrub*, 180 A.2d 467, 470 (Del. 1962)).

DISCUSSION

The general question under discussion is whether a claim from Plaintiff was pending with Defendants' insurer. This issue is governed by 18 *Del.C.* § 3914 which provides that, "[a]n 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 him of the applicable state statute of limitations regarding action for his damages."

Our courts have deemed that "[t]his provision, by its terms, applies to a claim received by an insurer pursuant to a casualty insurance policy. The object of such a statutory provision is to require that an insurer, under a casualty insurance policy which has received a claim, must notify the claimant of the applicable statute of limitations in order that the insurer can assert statute of limitations against the claimant. The term "casualty insurance" is defined in 18 *Del. C.* § 906 to include a breadth of coverages, including "insurance against legal liability for the death, injury or disability of any human being." It would appear that the statute, therefore, does apply to a claim under a liability insurance policy. It does not confine the statutory requirement to claims made by an insured. Therefore, if a claim was presented to the insurer, the insurer had the obligation to notify the claimant of the applicable statute of limitations and, in the absence of such notification, the insurer and its insured would be barred from asserting the statute of

limitations against the claimant." *Samoluk v. Basco Inc.*, 528 A.2d 1203, 1204 (Del. Sup. 1987).

Further, and pertinent in the context of this case, this Court said in *McMillan v. State of Delaware*, 2002 WL 32054600, *3, (Del. Super), that "Section 3914 operates as 'an expression of legislative will to toll otherwise applicable time limitations with respect to claims made against insurers.' *Stop & Shop Co. v. Gonzales,* 619 A.2d at 898 (Del. 1993) (*citing Lankford v. Richter,* 570 A.2d 1148, 1149 (Del. 1990)). An insurer who fails to comply with the notification requirements of Section 3914 is estopped from asserting the statute of limitations defense against the claimant. *See Lankford v. Richter,* 570 A.2d at 1150; *Samoluk v. Basco, Inc.,* 528 A.2d 1203, 1204 (Del.Super.Ct.1987). Since PMA failed to provide the required notice, they are estopped from asserting the statute of limitations as a defense."

In this case, Defendants argue that Section 3914 is not triggered because no formal claim was filed by the Plaintiffs with the insurance company. This argument was also made in *McMillan.* There, the Court explained the requirements of a claim stating, "the Board found that section 3914 is not triggered in this case since a claim was not filed during the applicable statute of limitations. The term claim is not defined in the Insurance Code. Black's Law Dictionary defines claim as:

> "The aggregate of operative facts giving rise to a right enforceable by a court; the assertion of an existing right; any right to payment or to an equitable remedy, even if contingent or provisional; a demand for money or property to which one asserts a right; an interest or remedy recognized at law; the means by which a person can obtain a privilege, possession, or enjoyment of a right or thing." Black's Law Dictionary 240-41 (7th ed.1999).

In this case, Claimant notified Employer of the incident, filed an accident report, and received correspondence from PMA acknowledging receipt of the worker's compensation claim. Although Employer argues that a formal claim was never filed, taken together these actions amount to the "pendency of a claim" triggering the application of section 3914. PMA's letter acknowledging receipt of the worker's compensation claim indicates that PMA was aware that a claim was pending. Accordingly, it was PMA's responsibility to provide notice to Claimant at that time of the applicable statute of limitations." *Id*.

Here, the clear evidence in the record shows that Defendants' insurance company was aware that at least a provisional claim was pending. Although no formal claim was filed, Plaintiff informed the insured that an accident occurred, and the chain on the bicycle had broken. Defendants' carrier, Wilmington Insurance Company (hereafter "Wilmington"), retained GAB Robins (hereafter "GAB") to investigate the claim. In this regard, a letter from GAB to Wilmington dated December 20, 2001, identified the Plaintiff by name, and he is referred to as "claimant." Further, Plaintiff is noted to live in Harrisburg, PA and the insurance company was aware that the insured, Thomas Lucas and the Plaintiff "have been personal friends for approximately 30 years." Accordingly, it is impossible for Defendants (or Wilmington) to assert that they had no way of contacting Plaintiff. The insured informed GAB that Plaintiff was pursuing a third liability claim against the operator of the vehicle who struck him. Consequently, this letter advised "'a low key approach' *to this claim at this time.*" (emphasis added).

In addition to the documentary evidence, the Defendants made certain admissions. They admitted that Plaintiff told them he wished the damages he suffered, which resulted from the accident occurring on October 14, 2001, to be covered by their insurer.[2]

[2] Admission #11.

Defendants admitted that they passed information on the claim to the insurer.[3] They further admitted that the insurer communicated with them regarding the claim.[4] Defendants admitted that they told Plaintiff that a claim regarding the October 14, 2001 accident was pending, that they made every effort to assist Murphy in submitting a claim to their insurer, and that they in fact believed that a claim was pending.[5]

Just as in *McMillan*, the actions of the Plaintiff, Defendants, and insurer, taken together, collectively demonstrate the "pendency of a claim" within the meaning of Section 3914. GAB's letter explained the claim and treated the situation as a claim. It suggested a $7,500 a reserve for the Plaintiff's bodily injury claim. Clearly, Defendants and Wilmington were aware that a claim was pending. Wilmington operates a commercial business which provides essential services and bears the risk of loss for noncompliance with regulatory provisions designed to protect the public. Given the draconian consequences resulting from a missed limitations period, the General Assembly exercised reasonable judgment in requiring carriers to provide written notice to claimants.

Defendants also argue that, because Plaintiffs obtained an attorney, it was not reasonable to think that they would rely upon the alleged tort-feasor to provide knowledge of when a statute of limitations runs. However, this argument is irrelevant under Section 3914. Under settled law, notice is required "even if claimant is represented by an attorney." *Sneddon v. Nationwide Insurance Co.*, 1995 WL 268555 (Del. Super.).

CONCLUSION

Based on the foregoing, Defendants' Motion for Summary Judgment is denied. It is undisputed that written notice was not given as required. This decision moots arguments

[3] Admission #13.
[4] Admission #15.
[5] Admission #16, 26, 27.

based on different grounds of estoppel or waiver which may present disputed issues of fact.

Defendants have referenced apparent discrepancies in Plaintiff's history about the accident. The Plaintiff's affidavit filed in this case suggests that the bike was defective. However, when Plaintiff was asked about the condition of the bike in the Smidt litigation, he did not report "any real problems" (Deposition transcript p.21). A jury will have to decide whether there is actually any conflict between these statements. As is true in every case, the jury will make credibility determinations which exceed the purview of a summary judgment motion.

IT IS SO ORDERED.

_____
Richard F. Stokes, Judge

Original to Prothonotory
cc: Edward F. Eaton
Brian E. Lutness