SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: IAS PART 15

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AMERICAN TRANSIT INSURANCE COMPANY,

Petitioner,

-against-

Index No.
650998/2018

MOTOR VEHICLE ACCIDENT INDEMNIFICATION CORPORATION,

Respondent.

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Crane, J.:

Petitioner American Transit Insurance Company (American Transit Insurance) brings this Article 75 proceeding, seeking to stay an arbitration scheduled to be held before Arbitration Forums, Inc., regarding insurance coverage for no-fault medical bills after an auto accident (CPLR 7503). Respondent Motor Vehicle Accident Indemnification Corporation (MVAIC) cross-moves to dismiss the petition.

The underlying arbitration arises out of a motor vehicle accident, which occurred on June 27, 2009, in which Enock Gustave, a passenger in the vehicle insured by petitioner, was injured (verified petition, ¶¶ 5, 8). Mr. Gustave assigned his right to collect no-fault benefits in connection with the accident to his healthcare providers Gerard Avenue Medical, P.C. (Gerard Avenue Medical) and Lemonti Medical, P.C. (Lemonti Medical) (*id.*, ¶ 9). On September 1, 2009, American Transit Insurance issued a global denial, denying Gustave's no-fault claim for failure to provide notice of claim within 30 days of the accident (*id.*). It did not disclaim insurance for the vehicle. American Transit Insurance also received the bills from these providers, but denied the claims because notice of the accident was submitted more than 30 days

after the accident, and the bills were submitted more than 45 days after the date of the medical service (*id.*, ¶ 10). The first of these denials was issued by petitioner on January 7, 2010 and the last was issued on May 12, 2010 (*id.*).

Gerard Avenue Medical and Lemonti Medical later made claims to MVAIC. On October 6, 2017 and October 11, 2017, MVAIC paid them (affirmation of Kevin P. Fitzpatrick, dated Oct 4, 2018 [Fitzpatrick aff], ¶ 4). By letter dated October 26, 2017, MVAIC informed American Transit Insurance that it made payments to providers who had treated Enock Gustave and demanded reimbursement (petition, ¶ 12). Sometime thereafter, MVAIC commenced an arbitration before American Arbitration Forums, claiming American Transit Insurance was obligated to reimburse it for the payments it made to these medical providers (Fitzpatrick aff, ¶ 5).

On March 1, 2018, American Transit Insurance brought this petition seeking a permanent stay of the arbitration, asserting that the statute of limitations bars the arbitration, MVAIC's claims are not subject to mandatory arbitration under the statute and regulations, and there is no agreement to arbitrate.

DISCUSSION

The petition is dismissed. The arbitration is timely, and the requirement to arbitrate this dispute is in the no-fault statute and regulations.

Pursuant to CPLR 7503 (b), a party who has not participated in the arbitration may make an application to stay the arbitration on the ground that the claim sought to be arbitrated is barred by the statute of limitations (*see* CPLR 7502 [b]; *see also Matter of Motor Veh. Acc. Indem. Corp. v Aetna Cas. & Sur. Co.*, 89 NY2d 214, 218-222 [1996]). CPLR 7502 (b) provides that a petitioner may seek a stay of arbitration if, "at the time the demand for arbitration was made or a

notice of intention to arbitrate was served, the claim sought to be arbitrated would have been" time-barred had it been asserted in court (CPLR 7502 [b]).

In this case, American Transit Insurance seeks a stay of arbitration on statute of limitations grounds, but fails to submit a copy of the demand for arbitration or the notice of intention to arbitrate. While this defect could be a sufficient basis to deny its application, even if it submitted such proof, the arbitration is timely.

Article 51 of the Insurance Law sets forth the no-fault scheme, and article 52 sets forth MVAIC's rights "to avail itself of the no-fault carrier responsibility-shifting features of sections 5105 and 5221 (b) (6), as implemented by the Insurance Department regulations (*see* 11 NYCRR 65.10, 65.15)" (*Matter of Motor Veh. Acc. Indem. Corp. v Aetna Cas. & Sur. Co.*, 89 NY2d at 219). Section 5105 (a) provides that "[a]ny insurer liable for the payment of first-party benefits to or on behalf of a covered person . . . which another insurer would otherwise be obligated to pay pursuant to [sections 5103 [a] or 5221]" may recover the amount paid from the insurer of any other covered person (Insurance Law § 5105 [a]). Section 5105 (b) requires mandatory arbitration to resolve disputes between insurers regarding their responsibility for the payment of first-party benefits (11 NYCRR § 65-3.12 [b]; *M.N. Dental Diagnostics, P.C. v Government Empls. Ins. Co.*, 81 AD3d 541, 541 [1st Dept 2011]; *SZ Med., P.C. v Lancer Ins. Co.*, 7 Misc 3d 86, 88–89 [App Term 2d Dept 2005]). The Insurance Department regulations provide that "[i]f a dispute regarding priority of payment arises among insurers who otherwise are liable for the payment of first-party benefits, . . . [it] shall be resolved in accordance with the arbitration procedures established pursuant to section 5105 of the Insurance Law and section 65–4.11 of this Part" (11 NYCRR 65–3.12 [b]). These provisions expressly state that disputes among insurers involving the priority of payment or sources of payment as provided in 11 NYCRR § 65–3.12,

"is not considered a coverage question and must be submitted to mandatory arbitration under this section" (11 NYCRR 65–4.11[a][6]). Moreover, this mandatory arbitration "is the sole available remedy pursuant to 11 NYCRR 65-4.11 and Insurance Law §§ 5105 and 5221 (b) (6) in order to determine issues of coverage between insurance carriers and defendant Motor Vehicle Accident Indemnification Corporation (MVAIC)" (*Mendoza v Farmers Ins. Co.*, 114 AD3d 428, 428–29 [1st Dept 2014]). Section 5221 (b) (3) of the Insurance Law equates MVAIC to an "insurer" for purposes of article 51 (*Matter of Motor Veh. Acc. Indem. Corp. v Aetna Cas. & Sur. Co.*, 89 NY2d at 219-220).

MVAIC's obligations to pay no-fault benefits to an injured party, such as Enock Gustave, or his assignees, Gerard Avenue Medical and Lemonti Medical, where the accident vehicle's insurer, American Transit Insurance, denies coverage is based purely on the no-fault statutes (*id.* at 221). Thus, its obligations arise only by statute or Insurance Department regulations, making the three-year limitations period in CPLR 214 (2) apply. A claim accrues for statute of limitations purposes "when all of the facts necessary to the cause of action have occurred so that the party would be entitled to obtain relief in court" (*id.* [internal quotation marks and citation omitted]; *see also Matter of State Ins. Fund [Country-Wide Ins. Co.]*, 276 AD2d 432, 432 [1st Dept 2000]; *Matter of Progressive Ins. Co. v Motor Veh. Acc. Indem. Corp.*, 248 AD2d 390, 390 [2d Dept 1998]; *Matter of Budget Rent-A-Car [State Ins. Fund]*, 237 AD2d 153, 153 [1st Dept 1997]). Where MVAIC seeks to recover no-fault benefits from the primary insurer, CPLR 214 (2) begins to run when MVAIC makes the initial payment to the claimants, because that is when all the facts necessary to its claim for reimbursement occurred (*Matter of Motor Veh. Acc. Indem. Corp. v Aetna Cas. & Sur. Co.*, 89 NY2d at 221).

Here, exhibit 1 to the Petition, shows that MVAIC made its first payments to the claimants on October 6, 2017. All the facts necessary to MVAIC's claim for the recovery from American Transit Insurance of the amounts MVAIC paid to Mr. Gustave's medical providers occurred when MVAIC made that first payment. Clearly, MVAIC's demand for arbitration was made after that, and, thus, is timely as within three years of that payment.

Petitioner's arguments that the statute of limitations has run as to claims by the medical providers or assignors of Mr. Gustave, are addressed to direct claims by these medical providers against petitioner, not to MVAIC's demand to arbitrate under the no-fault statutes.

Contrary to petitioner's contention, MVAIC is not pursuing an equitable subrogation claim. MVAIC commenced arbitration to enforce its statutory rights, pursuant to Insurance Law §§ 5105 and 5221, for reimbursement of first-party benefits it paid to petitioner's insured. *Allstate Ins. Co. v Stein* (1 NY3d 416 [2004]), relied upon by petitioner, is distinguishable. In that case, Allstate Insurance Company sought reimbursement of additional personal injury protection (APIP) benefits that it paid. Because those APIP benefits do not appear in any statute, the Court held that the only means for Allstate to recover those benefits is through a claim in equitable subrogation (*id.* at 422). Here, in contrast, MVAIC's payments, and its right to recover those payments from other insurers, derives from the no-fault statutes and regulations (*see Matter of Motor Veh. Acc. Indem. Corp. v Aetna Cas. & Sur. Co.*, 89 NY2d at 221), and MVAIC's claim is not for equitable subrogation.

Petitioner's arguments regarding the merits of MVAIC's payment, and whether it has a right to recover its payments from petitioner, are inappropriate. Its assertion that it properly denied the claims because Mr. Gustave and the medical providers failed to meet the time limits

set forth in the Insurance Law and regulations, again, goes to the merits of the payments. Those issues are to be decided, in the first instance, by the arbitrator.

Petitioner's contention that this does not present a "priority of payments" dispute, and, therefore, is not subject to mandatory arbitration, is rejected. The instant matter clearly falls within the jurisdiction of Insurance Law § 5105 and is subject to mandatory arbitration (*see* 11 NYCRR § 65-4.11 [a] [6]). American Transit Insurance refused to pay Mr. Gustave's claims when they were first presented to it, and then MVAIC subsequently paid them. Petitioner's refusal to pay raises a question as to "priority of payments" between it and MVAIC, which question must be submitted to mandatory arbitration pursuant to Insurance Law § 5105 as implemented by the Insurance Department regulations (*see id.*; *see also M.N. Dental Diagnostics, P.C. v Government Empls. Ins. Co.*, 81 AD3d 541; *Pacific Ins. Co. v State Farm Mut. Auto Ins. Co.*, 150 AD2d 455, 456 [2d Dept 1989]). Moreover, regardless of whether American Transit Insurance denied coverage because no insurance existed, or because the claimants failed to meet filing deadlines, the dispute is still between MVAIC and another insurer over whether the insurer ought to have covered the claims for first-party benefits that MVAIC later paid, which dispute is subject to mandatory arbitration (11 NYCRR § 65-4.11 [a] [6]).

Accordingly, it is

ADJUDGED that the petition to stay the subject arbitration is denied in all respects, the cross motion to dismiss is granted, and the petition is dismissed, with costs and disbursements to respondent; and it is further

ADJUDGED that the parties shall proceed to arbitration forthwith and respondent's counsel shall serve a copy of this judgment upon the arbitral tribunal; and it is further

ADJUDGED that respondent MVAIC, having an address at 100 William St, 14th Floor, New York, NY 10038, do recover from petitioner American Transit Insurance Company, having an address at 1 Metrotech Center, Brooklyn, NY 11201, costs and disbursements in the amount of $_____ as taxed by the Clerk, and that respondent have execution therefor.

Dated: May 29, 2019

ENTER:

J.S.C.

HON. MELISSA A. CRANE
J.S.C.