[J-18-2002]
IN THE SUPREME COURT OF PENNSYLVANIA
WESTERN DISTRICT

SHIRLEY L. BELL AND THOMAS P. BELL, HER HUSBAND,	:	No. 77 WAP 2001
Appellants	:	Appeal from the Order of the Superior Court entered on April 10, 2001 at No. 2174PGH1998, reversing the Order of the
v.	:	Court of Common Pleas of Westmoreland County, Civil Division, entered on November 16,1998 at No. 6262 of 1996.
JOSEPH A. SLEZAK, M.D., JOSEPH A. SLEZAK, M.D. LTD, L. ALAN EGLESTON, M.D., AND FRICK COMMUNITY HEALTH CENTER,	:	
Appellees	:	Argued: March 5, 2002

DISSENTING OPINION

MR. JUSTICE SAYLOR **DECIDED: DECEMBER 19, 2002**

I agree with the majority that both first- and third-party claims fall within the PPCIGA Act's broad definition of "covered claim," and I fully support its reasoning in this respect. My position is opposite the majority's, however, as concerns the obligations of settling defendants in a tort action and PPCIGA's surrogate responsibilities in relation to such settlements. Centrally, I believe that, in furtherance of the aim of ameliorating hardship to claimants and policyholders attributable to insurer insolvencies, the statutory scheme devised by the General Assembly expressly requires PPCIGA to fund settlements of the kind presently before the Court, thus effectively restoring the parties to the tort litigation to the position that they would have occupied but for the insurer

insolvency, while maintaining the integrity of (and preserving incentives to enter) settlements. My reasoning follows.

The outset of the majority's analysis announces that defendants who have chosen to settle tort claims and whose insurers have become insolvent will be effectively immunized from the contractual obligation to fund their settlement commitments. See Majority Opinion, slip op. at 11. Presumably, it is also intended that the defendants should nonetheless enjoy the benefit of the under-funded settlement, namely, release from any underlying liability in tort. The majority does not ground such conclusions in any substantive provision of the PPCIGA Act, but rather, references as support only the enactment's guiding policy. Although I recognize that it is necessary to bear in mind the policies giving rise to legislation, I believe that it is equally essential for the judiciary to respect the manner by which the General Assembly has sought to effectuate its stated purposes by implementing the policies via application of the substantive terms of the statute. Courts should therefore take care to evaluate the mechanics of a statute before reaching broad conclusions concerning what must be done to implement the salient policy aims.[1] While I return to the policy perspective below, at this juncture I merely note that the majority's decision to reorder the relationship of the parties to the underlying tort litigation and settlement at the outset of its opinion has a profound effect on its analysis of the PPCIGA Act's provisions which ultimately follows.

The terms of the PPCIGA Act reflect an effort to create a statutory claims administration process to spread the loss attributable to insurer insolvency from

[1] In this regard, it should be recognized that remedial statutory schemes such as the PPCIGA Act are frequently tempered and nuanced as a result of legislative efforts to balance or accommodate competing policies and interests.

claimants and policyholders to a broader segment of the public. See, e.g., 40 P.S. §§991.1801-991.1820. Notably, the legislation contains no reference to, and no attempt to govern, the outcome of litigation among prospective claimants outside the administrative setting -- in particular, it is solely in the context of the distinct, administrative claims process that the non-duplication of recovery provision at issue here has relevance on its terms. See generally Panea v. Isdaner, 773 A.2d 782, 798 (Pa. Super. 2001) (Todd, J., dissenting) (observing, in response to the Superior Court majority's assertion that Dr. Slezak's opposition to payment was merely his assertion of a statutory right to extinguish his obligation on the claim, that such entitlement, where it may exist, is expressly vested in PPCIGA and not with a defendant-physician).

Although, as all Justices agree, both the Bells and Dr. Slezak were entitled to assert covered claims under the PPCIGA Act, it is important to also recognize that the Legislature substantially restricted PPCIGA's obligations in relation to covered claims of third parties such as the Bells, since PPCIGA possesses all rights of the insolvent insurer as if that insurer had not become insolvent. See 40 P.S. §991.1803(b)(2). In Pennsylvania, a third party to an insurance contract possessing a claim against the insured has no general right of action against the insurer. See, e.g., Folmar v. Shaffer, 232 Pa. Super. 22, 24, 332 A.2d 821, 823 (1974) ("The law is settled that 'in absence of a statute or a policy provision on which such right may be predicated, a person may not maintain a suit directly against the insurer to recover on a judgment rendered against the insured.'" (citations omitted)).[2] Therefore, in ordinary circumstances such as are presented here, PPCIGA has no obligation to pay third-party claims as such. Cf. H.K.

[2] The Bells do not contend that a statute or policy provision would have entitled them to assert a direct claim against PIC or PPCIGA; indeed, in their brief they emphasize that they made no such claim.

Porter Co. v. PIGA, 75 F.3d 137, 142 & n.5 (3d Cir. 1996) (recognizing obligations on PPCIGA's part to third-party claimants pursuant to Pennsylvania's direct action statute, 40 P.S. §117, in circumstances involving insolvency not only of the insurer, but also of the insured). [3] This defense, however, is obviously not available to PPCIGA in relation to a policyholder of the insolvent insured, who maintained a predicate contractual (first-party) relationship. Accordingly, in the present case, it should be recognized that the covered claim of Dr. Slezak is the only claim that PPCIGA has the obligation to consider for payment.[4]

This position comports with PPCIGA's statutory role in filling (or ameliorating) the void created by a carrier's insolvency, accords with the character of the insolvent-insured's liabilities, and alleviates many of the conceptual complexities presented in this line of cases. Since PPCIGA has identified no collateral source of recovery available to Dr. Slezak, the non-duplication of recovery provision simply is not implicated in relation to his covered claim as the insured. Cf. DeVane v. Kennedy, 519 S.E.2d 622, 631 (W.

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[3] The majority states that "the PPCIGA Act specifically provides the statutory basis for third-party beneficiary claims such as the Bells['] as the Act specifically contemplates third-party beneficiaries as claimants thereunder." Majority Opinion, slip op. at 12. In this regard, however, the majority gives no account for Section 991.1803(b)(2), which by its terms functions, inter alia, as an express, statutory limitation on PPCIGA's obligation to pay covered claims to the extent that the insolvent insurer would have possessed the right to deny payment. See 40 P.S. §991.1802(b)(2) (listing among the express powers of PPCIGA the ability to "be deemed the insurer to the extent of its obligation on the covered claims and, to such extent, [PPCIGA] shall have all rights, duties and obligations of the insolvent insurer as if that insurer had not become insolvent").

[4] In this regard, I would reject PPCIGA's argument that related first- and third-party claims necessarily constitute the same claim. The statutory definition does not support such a conclusion, nor is it necessary to construe the enactment in such manner in light of the express statutory machinery which requires of PPCIGA only a single satisfaction with regard to any overlapping claims by making available to it all defenses to claims which were available to the insured. See 40 P.S. §991.1803(b)(2).

Va. 1999) ("Whether there exists another policy of insurance does not matter unless it provides collateral coverage for the claim asserted against the insolvent insurer and, ultimately, against the [Insurance Guaranty Association]."). The statute, therefore, operates to afford Dr. Slezak (the policyholder and first-party claimant) the core protection that is central to its purposes, at the same time indirectly benefiting the Bells (third-party claimants who possessed no direct right of action against PIC) by providing the source of funding to effectuate their settlement. This also is in conformity with the express aims of the PPCIGA Act. See 40 P.S. §991.1801(1) (identifying the avoidance of financial loss to "claimants or policyholders" as among the Act's salutary purposes). Since the settlement should thus be fully funded, it should be consummated in absence of some appropriate contest by PPCIGA, see 40 P.S. §991.1803(b)(4), thereby alleviating the potential for rescission of compromises alluded to by members of the en banc Superior Court, see Panea, 773 A.2d at 789 n.3; id. at 797 (Del Sole, C.J., concurring); id. at 801 (Todd, J., dissenting), and supporting the strong public policy of this Commonwealth favoring consensual settlements. See Taylor v. Solberg, 566 Pa. 150, 157-58, 778 A.2d 664, 667 (2001); cf. Devane, 519 S.E.2d at 634 ("To rule as the [state guaranty association] suggests would completely obliterate and destroy the voluntary settlement agreement the parties reached prior to [a carrier's] insolvency[;] [g]iven the high esteem and great preference accorded settlements generally, . . . we cannot in good conscience set aside the voluntary resolution of this matter").

Furthermore, this plain meaning interpretation advances the public policy in support of adequate compensation to injured parties. See Bethea v. Forbes, 519 Pa. 422, 426, 548 A.2d 1215, 1217 (1988).[5] The interpretation also avoids the inherent and

[5] In this regard, the allusion of amicus, The Pennsylvania Medical Society, to a windfall on the part of the Bells is inapt. In the voluntary settlement of a claim, litigants and (continued)

unseemly conflict of interest that arises by virtue of PPCIGA's efforts to avoid its obligations to insured physicians such as Dr. Slezak based upon concerns regarding duplication of recovery that are remote to him, at the same time as the Association is endowed with the obligation to zealously defend the physician's interests. See generally J. Earnst Hartz, Jr., State Insurance Guarantee Associations, 22-FALL BRIEF 20, 45 (1992) (positing that "[t]he IGAs clearly have abandoned the mandate in the model acts and in the various IGA statutes to interpret the guaranty funds statute broadly to protect the insured").

Certainly, these advantages are counterbalanced by costs. I recognize that a determination that the non-duplication of recovery provision effectively does not operate in a vertical plane decreases the provision's potency in terms of constraining the breadth of PPCIGA's obligations.[6] Nevertheless, PPCIGA has not attempted to develop

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subrogees may accept a substantial reduction in due damages in exchange for expediency and certainty. It may, therefore, represent a substantial imposition for the litigant in such circumstances to be faced with an involuntary reduction in the proceeds of the compromise that was struck. Cf. DeVane, 519 S.E.2d at 634 ("in this world of uncertainties, . . . we find it patently unfair to require [the plaintiff], who undoubtedly considered these and many other potential outcomes in making her decision to settle her lawsuit and release her claims against the defendants, to sacrifice the voluntary and final resolution of her litigation[;] [w]e further find distasteful the [state guaranty association's] failure to account for this all-too-real potentiality given the Guarantee Act's explicit purpose of protecting claimants and policyholders of insolvent insurers."). Particularly as a plain interpretation of the statute does not impede remote subrogation interests, I would not attach the characterization of windfall to the mere preservation of the benefit of the plaintiffs' bargain.

[6] I would reject, however, the suggestion of Dr. Slezak and PPCIGA, citing to Burke v. Valley Lines, Inc., 421 Pa. Super. 362, 369, 617 A.2d 1335, 1338 (1992), that the provision is rendered meaningless by an interpretation that does not wholly insulate the insured from liability. The non-duplication of recovery provision plainly operates to relieve PPCIGA of responsibility for payment of claims possessed by those with a direct claim or right of action against the insolvent insured who also possess a collateral source of recovery; in this regard, the provision also serves the salutary purposes of the (continued)

a record concerning the degree to which such a reading affects the fiscal soundness of the statutory scheme; moreover, the judicial process is ill suited to considerations of these kinds. See infra. On the record presented, and in view of the terms employed in crafting the PPCIGA Act, I cannot say that the Legislature did not intend to strike the particular balance between the burden befalling the pooled resources of property and casualty insurers and collateral source insurers that results from a plain reading of the statute.

The final consideration which causes me to reject the construction of the opinion favoring affirmance is that the majority is simply required to fill too many and too large gaps in the statute in order to solidify its envisioned framework, principally in terms of absolving the defendant-physicians from liability.[7] An alteration of substantive liabilities of such magnitude has substantial collateral effects throughout the judicial process, as the observations of the en banc Superior Court dissent and the common pleas court reflect, and is therefore the kind of substantive change better suited, at least in the first instance, to the consideration of the General Assembly. See generally Pegram v. Herdrich, 530 U.S. 211, 221, 120 S. Ct. 2143, 2150 (2000) ("complicated factfinding and such a debatable social judgment are not wisely required of courts unless for some reason resort cannot be had to the legislative process, with its preferable forum for comprehensive investigations and judgments of social value"); Glenn Johnston Inc. v.

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statute. Therefore, and in light of the General Assembly's decision to afford PPCIGA all defenses available to the insolvent insured in relation to covered claims, I do not find the arguments relative to Burke controlling.

[7] Under the plain meaning interpretation, however, there is no cause to implement such a dramatic remedy as a stopgap measure, since relief from liability should occur in the ordinary course by virtue of the contractual release to be furnished by the Bells.

Commonwealth, Dep't of Revenue, 556 Pa. 22, 30, 726 A.2d 384, 388 (1999) (emphasizing that policy determinations are generally within the sphere of the Legislature); Conner v. Quality Coach, 561 Pa. 397, 417, 750 A.2d 823, 834 (1999) ("to the extent that litigants' substantive rights are to be substantially altered, modified, abridged or enlarged on the basis of public policy centered upon the protection of the public fisc through elimination of pass-through costs, such a rule, if appropriate, will have to originate in the legislative branch"). Moreover, this Court's prerogative is generally to abide by long-standing common law traditions in absence of express legislative action. Accord Lonigro v. Lockett, 625 N.E.2d 265, 269 (Ill. App. 1993) (observing that "a defendant remains liable for any judgment against him despite the presence of the [state guaranty] [f]und").[8] But see Proios v. Bokeir, 863 P.2d 1363, 1365 (Wash. App. 1993).

My primary difference with the majority is that I read the operative provisions of the PPCIGA Act as furthering the statute's salutary aims by creating an alternative source of funding to ameliorate the overall loss to claimants and policyholders occasioned by insolvencies of private insurers – the statute says nothing about extinguishing substantive law tort claims. Accord Panea, 773 A.2d at 797 (Todd, J., dissenting) (expressing the view, in line with the reasoning of the common pleas court, that the actual or effective molding of a verdict to reflect an offset on account of an insurer's insolvency constituted an improper interference with a lawfully rendered jury verdict). Facially, as noted, the PPCIGA Act administers third-party claims primarily by

[8] Notably, the General Assembly has demonstrated that, when it intends to release an insured from liability, it knows how to do so expressly. See, e.g., 40 P.S. §221.40 (providing that the filing of a claim with the statutory liquidator by a third party "shall operate as a release of the insured's liability to the third party on that cause of action in the amount of the applicable policy limit").

affording PPCIGA defenses that would have been available to the insolvent insurer, not by extension of the non-duplication of recovery provision to disturb consensual or adversarial resolution of controversies outside the scope of the statutory claims process. Moreover, the overall objectives of the statute (protection of the interests of both claimants and policyholders) are furthered by applying the express terms of the statute to require PPCIGA to fund settlements in the same manner as was expected of the insurer prior to its insolvency in circumstances in which the policyholder (who is the only party asserting a claim against PPCIGA) has no duplicate source of recovery.[9] Implementation of the majority's paradigm gives rise to claims for rescission of settlements and substantially diminishes incentives on the part of plaintiffs to compromise their claims in instances in which the insurer insolvency pre-dates settlement by eliminating an essential source of funding.

Thus, I find insufficient justification for applying the non-duplication of recovery provision remotely to offset recovery by plaintiffs on tort claims (or related settlements) asserted under state law against the insureds of insolvent insurers. I acknowledge that PPCIGA's interpretation of its enabling statute is to be afforded substantial weight. Nevertheless, here I conclude that the controlling terms of the statute are adequately clear, and PPCIGA's course of action sufficiently far beyond the bounds of its mandate, to warrant the contrary interpretation.

Accordingly, I would hold that the PPCIGA Act neither bars the Bells' claims against Dr. Slezak nor forecloses his liability to them, and the non-duplication of

[9] I reiterate that the adjudicative (as opposed to legislative) process is ill suited to assessing the fiscal aspects of the equation, i.e., whether the initial design of the PPCIGA scheme can function as that system is put into practice in the present and future economic marketplace.

recovery provision does not relieve PPCIGA of its payment obligation in relation to Dr. Slezak's covered claim. The effect of the statute, therefore, should be to place the Bells and Dr. Slezak in the positions that they would have occupied had PIC remained solvent.

Mr. Justice Nigro joins this dissenting opinion.