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THE APPROVAL OF THE COMMITTEE ON OPINIONS

GEICO INSURANCE CO.,

*Plaintiff,*

v.

ERIE INSURANCE CO.,

*Defendants.*

SUPERIOR COURT OF NEW JERSEY

LAW DIVISION

BERGEN COUNTY

DOCKET No. BER-L-9751-14

CIVIL ACTION

**DECISION**

**Decided: January 5, 2014**

**Susan J. Steele, J.S.C.**

**Introduction**

Before the court is an application brought on behalf of Geico Insurance Company (“Geico” or “plaintiff”) against Erie Insurance Company (“Erie” or “defendant”), seeking the execution of an order to show cause to have the defendants appear and show cause why judgment should not be entered vacating the arbitration award. Defendants filed a cross-motion for summary judgment and opposition to the execution of the order to show cause. The parties appeared before the court on December 10, 2014.

For the foregoing reasons, the application for an order to show cause is granted, and the cross-motion is denied.

**Statement of Facts and Procedural History**

This matter arises from an automobile accident that occurred on June 21, 2009, wherein the vehicles were insured by plaintiff and defendant, respectively. Plaintiff paid PIP claims on

behalf of Scott Nistico, a passenger in plaintiff's vehicle, pursuant to said accident. At all relevant times, the parties were contractually obligated to resolve all disputes concerning the apportionment of liability and damages with regards to the accident through Arbitration Forums ("AF").

In April of 2011, plaintiff filed for arbitration with AF for recovery of PIP paid on behalf of Scott Nistico. At that time, plaintiff's claim was for \$15,247.59. However, due to a pending bodily injury claim, the arbitration was not held until June 19, 2013. Plaintiff amended its claim amount to \$252,215.00 on February 11, 2013, said amount exceeding defendant's policy limits. As such, on March 23, 2013, defendant raised an affirmative defense in the arbitration, claiming it was not required to arbitrate the claim which may be in excess of its policy limits. On June 19, 2013, AF entered a decision upholding defendant's affirmative defense and concluding AF has no jurisdiction in this case.

Subsequently, after retaining the present counsel and attempting to reach an amicable resolution, plaintiff again filed for arbitration of its claims against defendant on February 25, 2014, choosing to accept defendant's policy limits for its claim. A hearing took place on June 26, 2014. On June 30, 2014, AF entered a decision in favor of defendant, finding that plaintiff's second arbitration was filed after the expiration of the statute of limitations, and that plaintiff's original arbitration filing was not sufficient to satisfy the statute of limitations. The arbitrator reasoned although the first request for arbitration was filed within the statute of limitations, it was dismissed for lack of jurisdiction based on the arbitration agreement between the parties. Plaintiff had the opportunity to amend its pleading accepting the balance of defendant's remaining policy, which would have established jurisdiction within the PIP forum of AF.

However, plaintiff only took these steps approximately eight months later, after the statute of limitations had expired.

*The Instant Application*

Plaintiff contends pursuant to Article Third, paragraph (a) of the AF PIP agreement, an arbitrator's decision must be "based on local jurisdictional law." Plaintiff seeks to vacate the arbitration decision because, among other reasons, the arbitrator erroneously applied New Jersey law, the award was procured by undue means, and/or the arbitrator exceeded his powers.

Plaintiff alleges the AF panelist incorrectly found that plaintiff was barred from recovery by the two-year statute of limitations pursuant to N.J.S.A. 39:6A-9.1. Plaintiff states it had filed a prior arbitration action for the same loss on a date within the statute of limitations. At that time, its claim was within defendant's policy limits and could have been heard by AF. Subsequently, after several deferments due to the pending bodily injury, plaintiff's claim had increased, and defendant had the matter removed from AF due to policy limit issues. Plaintiff argues by formally demanding arbitration with AF within the statute of limitations, plaintiff initiated the dispute-resolving process, thereby satisfying the statute of limitations. See Allstate Insurance Co. v. Universal Underwriters Insurance Co., 330 N.J. Super. 628 (App. Div. 2000).

Plaintiff contends the goal of reducing litigation would be frustrated if defendant's policy limits could render the original filing of arbitration a nullity for the statute of limitation purposes. Namely, any AF filing made near the statute of limitations or still pending at the expiration of the statute of limitations would require filing of a law suit "just in case." Further, plaintiff avers defendant was on notice of the present dispute prior to the expiration of the statute of limitations. Therefore, the objective of enforcing the statute of limitations to ensure plaintiffs do not litigate stale claims is inapplicable in the instant matter. See Price v. N.J. Mfrs. Ins. Co., 182 N.J. 519,

524-25 (2005). Accordingly, plaintiff claims the arbitrator's holding that plaintiff's timely filing of arbitration in AF did not satisfy the statute of limitations because of defendant's policy limits is erroneous.

Plaintiff submits the arbitrator's improper application of the statute of limitations justifies vacating the arbitration award. An arbitrator's award that is contrary to New Jersey law may be reversed by the court. See Faherty v. Faherty, 97 N.J. 99, 112-13 (1984). The AF PIP agreement between the parties in this matter states the arbitrator's decision must be "based on local jurisdictional law." Plaintiff claims this refers to substantive law of the state, and not merely the particular state's laws regarding jurisdiction. N.J.S.A. 2A:23B-23(a) allows the court to vacate an award made in the arbitration proceeding if "the award was procured by corruption, fraud, or other undue means" or "an arbitrator exceeded the arbitrator's powers." The parties authorized the arbitrator to decide matters only based on New Jersey law. Plaintiff contends the arbitrator exceeded his power by misapplying the New Jersey statute of limitations, and the award was produced by undue means. As such, plaintiff argues the arbitration decision should be vacated pursuant to N.J.S.A. 2A:23B-23 as the decision was contrary to New Jersey law. Plaintiff urges the court to return the matter to AF for further adjudication consistent with New Jersey law.

#### *Cross-Motion/ Opposition*

Defendant filed a cross-motion seeking summary judgment. Defendant contends it is entitled to summary judgment because the arbitrator properly applied N.J.S.A. 39:6A-9.1 in finding the statute of limitations governing PIP reimbursement actions barred plaintiff's claim.

According to defendant, N.J.S.A. 39:6A-9.1 is clear on its face in stating the right of PIP recovery exists "within two years of the filing of the claim." In the present matter, plaintiff

received an application for PIP benefits on or about August 3, 2009, therefore, the statute of limitations expired on or about August 3, 2011. Plaintiff amended its application with AF to the amount exceeding the policy limits of defendant on February 11, 2013, long after the statute of limitations had expired. Plaintiff's amended claim was removed from the AF' jurisdiction because it exceeded defendant's policy limits. Contrary to plaintiff's argument, defendant indicates it did not exercise "its right to have the matter removed from AF due to policy limit issues." Instead, AF made a definitive ruling on the matter in controversy. Nevertheless, eight months after AF issued its first ruling on the matter, plaintiff refiled the same controversy with AF under a new docket number.

Defendant alleges plaintiff's timely filing for arbitration on April 14, 2011 does not deem timely its subsequent filing on February 25, 2014. Defendant argues the arbitrator correctly concluded plaintiff's first, timely filed matter was properly dismissed on jurisdictional grounds based on plaintiff's failure to accept defendant's remaining policy limits. Further, the arbitrator held the statute of limitations was not tolled because AF lacked jurisdiction with respect to plaintiff's April 14, 2011 filing, and plaintiff had failed to amend its pleading within the two-year statute of limitations.

Defendant argues the cases cited by plaintiff are factually distinguishable from the facts currently before the court. Here, plaintiff indisputably failed to amend its claim within the applicable statute of limitations. Defendant contends Allstate, supra, is distinguishable on its facts because here, unlike in Allstate, no agreement existed between the parties as to reimbursement of PIP benefits.

As such, defendant opines plaintiff's April 14, 2011 AF filing does not render its subsequent refiled timely. Rather, the 2014 filing was rendered a nullity because it was filed

nearly 4.5 years after the August 3, 2009 filing for PIP benefits, and more than eight months following the dismissal of plaintiff's first filing. Defendant represents plaintiff did not provide a justification for its untimeliness in amending the original claim. Defendant further notes plaintiff has already subjected defendant to three years of litigation concerning the PIP reimbursement, his claim was dismissed twice in arbitration, and allowing plaintiff to now burden the court as well as the defendant with the instant application contradicts the public policy.

Next, defendant avers plaintiff has failed to prove that the arbitration award was produced by corruption, fraud, or other undue means; or that the arbitrator exceeded his powers. Defendant argues arbitration is a substitute, and not a "springboard," for litigation. The arbitration award should be vacated only in clear cases where the statutory bases for vacation are demonstrated. See Kearny PBA Local No. 21 v. Town of Kearny, 81 N.J. 208, 221 (1979). Defendant contends the grounds for vacating the arbitration award enumerated in N.J.S.A. 2A:23B-23 are inapplicable in the present matter. The burden of proof rests on the plaintiff. Del Piano v. Merrill Lynch, Pierce, Fenner & Smith, Inc., 372 N.J. Super. 503, 510 (App. Div. 2004). Defendant claims Faherty is distinguishable on its facts, because while there the arbitrator's ruling was erroneous, here the arbitrator properly found the statute of limitations had expired and the plaintiff's claim was out of time. The ruling was based on plaintiff's failure to amend the amount of its claim within the time frame set forth by N.J.S.A. 39:6A-9.1.

Defendant concludes there is no genuine issue of material fact that plaintiff has not satisfied its burden of demonstrating that the subject arbitration award was procured by undue means and/or the arbitrator exceeded his powers.

Next, defendant posits plaintiff has failed to comply with N.J.S.A. 2A:23B-23(b) in seeking to vacate the subject arbitration award. As such, defendant urges the court to dismiss the instant Order to Show Cause as out of time. N.J.S.A. 2A:23B-23(b) requires that

[a] summary action . . . shall be filed within 120 days after the aggrieved party receives notice of the award . . . unless the aggrieved party alleges that the award was procured by corruption, fraud, or undue means, in which case the summary action shall be commenced within 120 days after the ground is known or by the exercise of reasonable care would have been known by the aggrieved party.

[N.J.S.A. 2A:23B-23(b).]

Defendant avers plaintiff's February 24, 2014 AF filing was based on identical grounds as the current application. Therefore, plaintiff knew or should have known of its allegations regarding the arbitration award. Plaintiff failed to file the instant Order to Show Cause within 120 days of February 25, 2014. Defendant contends because the instant application is out of time, defendant is entitled to summary judgment.

Lastly, defendant argues plaintiff cannot rely on N.J.S.A. 2A:24-8 in seeking to vacate the subject arbitration award because the instant dispute does not arise from a collective bargaining agreement.

Therefore, defendant requests that plaintiff's application is denied.

#### *Opposition/ Reply*

By way of letter brief, plaintiff submitted opposition to defendant's cross-motion and reply in further support of the present application.

Preliminarily, plaintiff claims defendant incorrectly frames the issue before the court. Namely, defendant erroneously opines AF's ruling in the first arbitration effectively meant that plaintiff lacked any forum to seek PIP reimbursement. Plaintiff submits there must be at least

some forum available for adjudication of PIP reimbursement claims. Thus, the only question before the court is whether the arbitrator's incorrect and unjust application of the statute of limitations can deny plaintiff its right to have its PIP reimbursement claim decided on the merits.

Plaintiff reiterates that the filing of the first arbitration satisfies the statute of limitations in this case. Plaintiff argues the matter was in deferred status with AF for years due to pending bodily injury litigation, leaving no expectation that plaintiff would amend its PIP claim until the matter was ready to move forward. Further, plaintiff notes defendant contended in error that the outcome of the first arbitration was a definitive ruling. Instead, the arbitrator found AF lacked jurisdiction, thus the parties in this matter were not required to forego litigation. Plaintiff submits a tribunal which lacks jurisdiction cannot make a dispositive ruling. Accordingly, plaintiff was able to seek an alternative forum for arbitration or to re-file with AF while electing to accept defendant's policy limits.

Plaintiff agrees that both arbitrations concerned the identical dispute and explains the second arbitration filing accepted the defendant's policy limits, thereby seeking a decision on the merits of plaintiff's reimbursement claim. Likewise, plaintiff states its argument in the second arbitration was identical to the argument it currently presents to court, because the arbitrator erred in his application of the New Jersey law. Plaintiff contends it is only required to file for arbitration within the statute of limitations. No authorities support the proposition that plaintiff is required to amend its claim within the statute of limitations. Further, plaintiff notes Allstate, supra, is applicable in this case. Like in Allstate, here the parties agreed to resolve PIP reimbursement matters through AF, and plaintiff initiated that process within the statute of limitations. Plaintiff avers it filed for arbitration within the statute of limitations, and when AF

found a lack of jurisdiction in the first arbitration, plaintiff referred the matter to counsel, who attempted to negotiate resolution with defendant prior to filing for a second arbitration.

Next, plaintiff alleges AF's failure to follow New Jersey law does constitute "undue means" and/or exceeds the arbitrator's powers. Plaintiff did not amend its contentions to the increased claim amount within the statute of limitation period because the matter was in deferred status with AF for years due to pending bodily injury litigation. Plaintiff posits it met the burden by demonstrating that the arbitrator failed to apply the New Jersey law as he was required to do.

In response to defendant's final point, plaintiff represents the instant application was filed within 120 days of the AF decision at issue.

Finally, plaintiff clarifies it referred to N.J.S.A. 2A:24-8 mistakenly in one part of its Complaint. However, plaintiff contends this error is immaterial to the matter before the court because the Complaint sufficiently sets forth plaintiff's claim pursuant to N.J.S.A. 2A:23B, and defendant was put on notice of plaintiff's claims.

Thus, plaintiff requests the AF's decision be vacated.

## Law

### *Orders to Show Cause*

R. 4:52-1(a) provides, in relevant part, "on the filing of a complaint seeking injunctive relief, the plaintiff may apply for an order requiring the defendant to show cause why an interlocutory injunction should not be granted pending the disposition of the action." R. 4:52-1(b) provides the application seeking injunctive relief is to proceed by order to show cause. The requirements for bringing an action by order to show cause are set forth in R. 4:67-2(a), which provides, in part:

If the action is brought in a summary manner pursuant to R. 4:67-1(a), the complaint, verified by affidavit made pursuant to R. 1:6-6,

may be presented to the court ex parte and service shall be made pursuant to R. 4:52-1(b) . . . [t]he court, if satisfied with the sufficiency of the application, shall order the defendant to show cause why final judgment should not be rendered for the relief sought. No temporary restraints or other interim relief shall be granted in the order unless the defendant has either been given notice of the action or consents thereto or it appears from the specific facts shown by affidavit or verified complaint that immediate and irreparable damage will result to the plaintiff before notice can be served or informally given.

### *Injunctive Relief*

Injunctive relief is an extraordinary equitable remedy that should be entered only with the exercise of great care and only upon a showing, by clear and convincing evidence, of entitlement to the relief. Dolan v. DeCapua, 16 N.J. 599, 614 (1954) (“Injunctive judgments are not granted in the absence of clear and convincing proof”); Waste Management of N.J., Inc. v. Union County Utilities. Auth., 399 N.J. Super. 508, 519 (App. Div. 2008); Mays v. Penza, 179 N.J. Super. 175, 179-80 (Law Div. 1980) (Injunction should be granted “only where the proven equities establish a clear need” and “only in the clearest of factual circumstances and for the most compelling of equities.”).

The seminal case in determining whether preliminary injunctive relief should be granted is Crowe v. De Gioia, 90 N.J. 126 (1982). Under Crowe, the movant bears the burden of demonstrating that: 1) irreparable harm is likely if the relief is denied; 2) the applicable underlying law is well settled; 3) the material facts are not substantially disputed and there exists a reasonable probability of ultimate success on the merits; and 4) the balance of the hardship to the parties favors the issuance of the requested relief. Id. at 132-34. Each of these factors must be clearly and convincingly demonstrated. Waste Management of N.J., Inc., supra, 399 N.J. Super. at 520.

A preliminary injunction should not be entered except when necessary to prevent substantial, immediate and irreparable harm. Subcarrier Communications, Inc. v. Day, 299 N.J. Super. 634, 638 (App. Div. 1997). Harm is generally considered irreparable in equity if it cannot be redressed adequately by monetary damages. Crowe, supra, 90 N.J. at 132-33. The movant may not circumvent this principle by filing an action to “enjoin” the other party to pay money or to cease withholding payment. Medical Soc. of New Jersey v. AmeriHealth HMO, Inc., 376 N.J. Super. 48, 62 (App. Div. 2005). Pecuniary damages may be inadequate due to the nature of the injury or the right affected. Crowe, supra, 90 N.J. at 133. Moreover, to prevail on an application for temporary relief, the movant must make a preliminary showing of a reasonable probability of ultimate success on the merits. Ibid. That requirement is tempered by the principle that mere doubt as to the validity of the claim is not an adequate basis for refusing to maintain the status quo. Ibid.

Although all four factors must weigh in favor of injunctive relief, courts may take a less rigid view in consideration of the factors where the interlocutory relief sought is designed to preserve the status quo. McKenzie v. Corzine, 396 N.J. Super. 405, 414 (App. Div. 2007). See also Rinaldo v. RLR Inv., LLC, 387 N.J. Super. 387, 396 (App. Div. 2006) (“a party who seeks mandatory preliminary injunctive relief must satisfy a ‘particularly heavy’ burden.”). This is so as the primary purpose of interlocutory injunction is to maintain the parties in substantially the same condition when the final decree is entered as they were when the litigation began. Crowe, supra, 90 N.J. at 134. The issuance of an interlocutory injunction must be squarely based on an appropriate exercise of sound judicial discretion, which, when limited to preserving the status quo during the suit’s pendency, may permit the court to place less emphasis on a particular Crowe factor if another greatly requires the issuance of the remedy. Waste Management. of N.J.

Inc., supra, 399 N.J. Super. at 520. By the same token, in some cases, such as when the public interest is greatly affected, a court may withhold relief despite a substantial showing of irreparable injury to the applicant. Ibid.

Generally, an injunction “should be granted only with the exercise of great care and only where the proven equities establish a clear need.” A court may grant the extraordinary relief of the preliminary injunction only in the clearest of factual circumstances and for the most compelling of equities. Mays v. Penza, 179 N.J. Super. 175, 179-80 (Law Div. 1980); see also, Kingsdorf v. Kingsdorf, 351 N.J. Super. 144, 155-56 (App. Div. 2002).

#### *Motions for Summary Judgment*

Motions for summary judgment are controlled by R. 4:46-2 provides that a “motion for summary judgment shall be served with briefs, a statement of material facts and with or without supporting affidavits.” Ibid. R. 4:46-2 further provides, in pertinent part:

[t]he judgment or order sought shall be rendered forthwith if the pleadings . . . together with the affidavits . . . show that there is no genuine issue as to any material fact challenged and that the moving party is entitled to a judgment or order as a matter of law. An issue of fact is genuine only if, considering the burden of persuasion at trial, the evidence submitted by the parties on the motion, together with all legitimate inferences therefrom favoring the non-moving party, would require the submission of the issue to the trier of fact.

[R. 4:46-2(c).]

In Brill v. Guardian Life Ins. Co. of Am., 142 N.J. 520, 523 (1995), the Supreme Court of New Jersey held, when deciding a motion for summary judgment, the motion judge must consider whether the competent evidential materials presented, when viewed in a light most favorable to the non-moving party and considering the applicable evidentiary standard, are

sufficient to permit a rational fact finder to resolve the alleged disputed issues in favor of the non-moving party. See *id.* at 523.

#### *Vacating Arbitration Decision*

N.J.S.A. 11:3-5.6(g) grants this court jurisdiction to review the final decision of an arbitrator within the confines of an action for summary adjudication. Under N.J.S.A. 2A:23B-23(a), the court may vacate arbitration award if:

(1) the award was procured by corruption, fraud, or other undue means;

(2) the court finds evident partiality by an arbitrator; corruption by an arbitrator; or misconduct by an arbitrator prejudicing the rights of a party to the arbitration proceeding;

(3) an arbitrator refused to postpone the hearing upon showing of sufficient cause for postponement, refused to consider evidence material to the controversy, or otherwise conducted the hearing contrary to section 15 of this act, so as to substantially prejudice the rights of a party to the arbitration proceeding;

(4) an arbitrator exceeded the arbitrator's powers;

(5) there was no agreement to arbitrate, unless the person participated in the arbitration proceeding without raising the objection pursuant to subsection c. of section 15 of this act not later than the beginning of the arbitration hearing; or

(6) the arbitration was conducted without proper notice of the initiation of an arbitration as required in section 9 of this act so as to substantially prejudice the rights of a party to the arbitration proceeding.

Furthermore, N.J.S.A. 2A:23B-23(b) imposes a timeframe for filing a summary action:

A summary action pursuant to this section shall be filed within 120 days after the aggrieved party receives notice of the award pursuant to section 19 of this act or within 120 days after the aggrieved party receives notice of a modified or corrected award pursuant to section 20 of this act, unless the aggrieved party alleges that the award was procured by corruption, fraud, or other undue means, in which case the summary action shall be commenced

within 120 days after the ground is known or by the exercise of reasonable care would have been known by the aggrieved party.

If the court vacates the arbitration award on any ground except for that set forth in N.J.S.A. 2A:23B-23(a)(5), the court may order a rehearing. If the court vacates the award pursuant to N.J.S.A. 2A:23B-23(a)(1) or (2), “the rehearing shall be before a new arbitrator.” N.J.S.A. 2A:23B-23(c). Lastly, if the award is vacated based on paragraphs (3), (4), or (6), “the rehearing may be before the arbitrator who made the award or the arbitrator’s successor.” Ibid.

If the court finds vacation of the award is not warranted, “it shall confirm the award unless an application to modify or correct the award is pending.” N.J.S.A. 2A:23B-23(d).

### Legal Analysis

Based on the parties’ written submissions and representations made during the oral argument, it appears that defendant does not dispute that the arbitration proceeding between the parties is bound by the New Jersey law. N.J.S.A. 39:6A-9.1(a) sets forth, in relevant part:

An insurer . . . paying . . . personal injury protection benefits . . . as a result of an accident occurring within this State, shall, within two years of the filing of the claim, have the right to recover the amount of payments from any tortfeasor who was not, at the time of the accident, required to maintain personal injury protection or medical expense benefits coverage, other than for pedestrians, under the laws of this State, including personal injury protection coverage required to be provided in accordance with section 18 of P.L.1985, c.520 (C.17:28-1.4), or although required did not maintain personal injury protection or medical expense benefits coverage at the time of the accident.

Thus, N.J.S.A. 39:6A-9.1 requires that a formal demand for arbitration be filed within two years of the filing of the PIP claim. New Jersey Automobile Full Insurance Underwriting Ass’n v. Liberty Mutual Insurance Co., 270 N.J. Super. 49, 53 (App. Div. 1994). An accident which gave rise to the present matter occurred on June 21, 2009. Both parties agree that plaintiff timely filed for arbitration with AF in April of 2011, prior to the expiration of the statute of

limitations, and in accordance with N.J.S.A. 39:6A-9.1. Plaintiff amended its claim amount to \$252,215.00 on February 11, 2013, said amount exceeding defendant's policy limits. Arbitration proceeding was then deferred due to plaintiff's pending bodily injury claim and took place in June of 2013. The arbitrator concluded AF had no jurisdiction in the case because defendant was not required to arbitrate a claim in excess of defendant's policy limits.

Subsequently, plaintiff retained present counsel. The parties were unable to resolve this matter amicably. As such, plaintiff again filed for arbitration of its claims, under a new docket, on February 25, 2014, now choosing to accept defendant's policy limits for its claim. The arbitration hearing took place on June 26, 2014, and on June 30, 2014, AF found that plaintiff's second arbitration was filed after the expiration of the statute of limitations. AF found that plaintiff's April 2011 filing did not satisfy the statute of limitations. Specifically, the statute of limitations was not tolled because AF lacked jurisdiction with respect to plaintiff's first filing. Furthermore, plaintiff did not timely amend its pleading accepting the balance of defendant's policy prior to the expiration of the statute of limitations.

The court is persuaded plaintiff satisfied the two-year statute of limitations by formally demanding arbitration with AF in April of 2011. By way of its first formal demand for arbitration, plaintiff initiated the dispute-resolving process. See Allstate, supra, 330 N.J. Super. at 636. As explained in Allstate, N.J.S.A. 39:6A-9.1(b) sets forth two methods of resolving PIP reimbursement disputes: "the determination as to whether an insurer . . . is legally entitled to recover . . . shall be made against the insurer of the tortfeasor, and **shall be by agreement of the involved parties or, upon failing to agree, by arbitration.**" N.J.S.A. 39:6A-9.1(b) (emphasis added).

Unlike the present case, the parties in Allstate “utilized the ‘preferred’ method of resolving PIP reimbursement disputes: they agreed in 1993.” Allstate, *supra*, 330 N.J. Super. at 636. Specifically, a partial payment was requested, and Allstate was reimbursed for that payment. Ibid. The court reasoned that Allstate would have to “demand arbitration within two years of the PIP claim” only if “Universal declined to reimburse Allstate in 1993, when Allstate initially sought reimbursement.” However, once the parties agreed to the initial reimbursement, the two-year statute of limitations contained in N.J.S.A. 39:6A-9.1 “was no longer a factor” because it was “satisfied by the agreement.” Ibid.

Despite this factual distinction, the court finds the holding of Allstate is applicable in the present case. The Allstate court explained “[a]rbitration, under the applicable statute, is required to resolve disputes relating to “the amount of recovery” as well as whether an insurer is “legally entitled to recover.” Ibid. (citing N.J.S.A. 39:6A-9.1). Accordingly, after the parties agree to a reimbursement within two years of the filing of an insured’s PIP claim, “any future disputes regarding entitlement to recovery or the reimbursement amount are also to be resolved by agreement or arbitration.” Id. at 637. At such time, however, “the two-year statute of limitations can no longer be raised as a bar.” Ibid. While the parties in Allstate agreed to resolve their disputes by the more preferred method, by agreement, the parties in the instant matter elected to subject their disputes to arbitration – the second method contemplated by N.J.S.A. 39:6A-9.1(b). Id. at 636. Correspondingly, the parties currently before the court agreed to resolve “any future disputes regarding entitlement to recovery or the reimbursement amount” by arbitration through AF. Like in Allstate, plaintiff’s formal demand for arbitration and the parties’ agreement to proceed through AF took place within two years of the filing of an insured’s PIP claim, thereby

satisfying the statute of limitations. Once satisfied, the statute of limitations could no longer be raised as it pertains to the controversy between the parties. Id. at 637.

This holding is consistent with the purpose of the statute of limitations: “to provide defendants a fair opportunity to defend and to prevent plaintiffs from litigating stale claims.” Price, supra, 182 N.J. at 524 (internal citations omitted). Here, defendant was timely notified of the claims and remained on notice of said claims throughout the pendency of the plaintiff’s bodily injury claim. The court recognizes the plaintiff did not amend its original claim or re-file for arbitration immediately following the dismissal of plaintiff’s first filing on jurisdictional grounds. However, the court finds the eight-month delay by plaintiff was justified as plaintiff retained new counsel who attempted to resolve the dispute amicably. Thus, defendant did not present any evidence demonstrating that allowing this matter to be adjudicated on its merits would be significantly prejudicial to defendant. Ibid.

Next, the court notes its jurisdiction in vacating the arbitration decision and remanding the matter for further arbitration is based on N.J.S.A. 2A:23B-23(4). The court finds the arbitrator exceeded his powers by incorrectly applying the New Jersey law concerning the statute of limitations.

Lastly, the court finds the present application was filed timely and in accordance with N.J.S.A. 2A:23B-23(b). The second arbitration was rendered on June 30, 2014. The Order to Show Cause presently before the court was filed on October 21, 2014, which is within 120 days after the plaintiff received notice of the second arbitration award. Ibid.

Because the arbitration decision is vacated based on N.J.S.A. 2A:23B-23(4), the rehearing may take place before the arbitrator who made the award or the arbitrator’s successor. N.J.S.A. 2A:23B-23(c).

**Conclusion**

For the foregoing reasons, plaintiff's application is granted, and defendant's application is denied.