

NOT FOR PUBLICATION WITHOUT THE  
APPROVAL OF THE APPELLATE DIVISION

SUPERIOR COURT OF NEW JERSEY  
APPELLATE DIVISION  
A-544-95T3

SELECTIVE INSURANCE COMPANY,  
as subrogee of Noreen Simonelli  
and James H. Callahan,

Plaintiff-Appellant,

v.

PASCHALL TRUCK LINES, INC.,  
and JAMES T. HALL,

Defendants-Respondents.

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Submitted: March 20, 1996 - Decided: APR 23 1996

Before Judges King and Landau.

On appeal from the Superior Court of New  
Jersey, Law Division, Union County.

Methfessel & Werbel, attorneys for appellant  
(Steven A. Kluxen, on the brief).

Palmer Biezup & Henderson, attorneys for  
respondents (Lawrence D. Jackson, on the  
brief).

PER CURIAM

This is an appeal from a summary judgment in favor of  
defendants on the \$20,000 PIP reimbursement claim of Selective  
Insurance Company (Selective). The claim arose from an automobile  
accident in Elizabeth, New Jersey on February 9, 1993.

James Callahan, an occupant of the Simonelli vehicle, insured  
by Selective, presented a PIP claim to Selective on June 4, 1993.  
Selective paid the PIP claim in full and sought to recover these

payments from defendants, the apparently negligent parties causing the February 9, 1993 accident. The defendants were insured by Carolina Casualty Insurance Company. Selective filed suit in the Law Division against Carolina's insureds, defendants Paschall Truck Lines, Inc. and James T. Hall, on January 30, 1995, well within the two-year period of limitations prescribed by N.J.S.A. 39:6A-9.1.

The pertinent statute provides for a direct recovery of PIP payments against insurers of tortfeasors not required under New Jersey law to maintain PIP coverage.<sup>1</sup> The 1983 amendment to the

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<sup>1</sup>N.J.S.A. 39:6A-9.1 states in full

An insurer, health maintenance organization or governmental agency paying benefits pursuant to subsection a., b. or d. of section 13 of P.L. 1983, c. 362 (C. 39:6A-4.3) or personal injury protection benefits in accordance with section 4 or section 10 of P.L. 1972, c. 70 (C. 39:6A-4 or 39:6A-10), 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. In the case of an accident occurring in this State involving an insured tortfeasor, the determination as to whether an insurer, health maintenance organization or governmental agency is legally entitled to recover the amount of payments and the amount of recovery, including the costs of processing benefit claims and enforcing rights granted under this

(continued...)

statute provided for a recovery for PIP benefits paid to New Jersey insureds against tortfeasors which are outside the New Jersey no-fault statutory insurance scheme. Allstate Ins. Co. v. Coven, 264 N.J. Super. 240 (App. Div. 1993). See Craig & Pomeroy, New Jersey Auto Insurance Law § 4:3-3 at 42 (1995).

On July 10, 1995 the defendants moved for summary judgment on the PIP claim on time-bar grounds. Selective then cross-moved for an order that the claim against defendants' carrier be submitted to arbitration, pursuant to the statutory contemplation of enforcement of the right "by agreement of the involved parties, or upon failing to agree, by arbitration." N.J.S.A. 39:6A-9.1. On August 11, 1995 the motion judge ruled in favor of defendants and dismissed the claim on time-bar grounds stating that the PIP count "will be dismissed because it does violate N.J.S.A. 39:6A-9.1 because there is a two-year statute of limitations for an insurance company to enforce their subrogation benefits and this was filed more than two years past the time of the last PIP claim form, which was June 4, 1993."

We disagree and reverse. This complaint was filed four months prior to the expiration of the two-year time-bar period and only after Carolina had spurned attempts by Selective to settle or adjust the claim. This is quite different from Insurance Underwriting v. Liberty Mutual, 270 N.J. Super. 49 (App. Div.

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<sup>1</sup>(...continued)

section, 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.

1994), where the claim was not formally asserted by the PIP carrier "within two years of the filing of the claim." N.J.S.A. 39:6A-9.1. Here the claim was asserted by suit, the only effective formal method to assert this claim, so far as we can determine from this record.

Suit was instituted well within the two-year period, after Selective had tried to adjust the claim, according to its representative's unopposed certification. Carolina refused to negotiate the claim. With no compulsory arbitration mechanism available between Selective and the defendants' out-of-state carrier, Selective had no recourse but to file suit and then seek arbitration.

We reverse and remand to the Law Division and direct that Selective's PIP claim be submitted to automobile arbitration pursuant to R. 4:21A(a)(1). Carolina should be named as the respondent in the arbitration as the real party in interest, R. 4:26-1.

Reversed and remanded.

I hereby certify that the foregoing is a true copy of the original on file in my office.

*R. Daniel Rose*  
Clerk