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NOT FOR PUBLICATION WITHOUT THE
APPROVAL OF THE APPELLATE DIVISION

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
A-2309-96T1

Y-MICHAEL TAXI,

Plaintiff-Appellant,

v.

ARBITRATION FORUMS, INC.,

Defendant,

and

ALLSTATE INSURANCE COMPANY,

Defendant-Respondent.

Argued November 10, 1997 - Decided NOV 2 5 1997

Before Judges Petrella and Eichen.

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

Samuel Rosenberg argued the cause for appellant (Bendt Weinstock, attorneys; Mr. Rosenberg and Christine M. Tiritilli on the brief).

David J. Dickinson argued the cause for respondent (McDermott & McGee, attorneys; Mr. Dickinson on the brief).

No brief was submitted on behalf of Arbitration Forums, Inc.

PER CURIAM

Plaintiff Y-Michael Taxi (Y-Michael), a New York corporation and owner of a fleet of taxis, appeals from an order requiring it to submit to arbitration to determine the amount it must reimburse defendant Allstate Insurance Company (Allstate) under N.J.S.A.

39:6A-9.1 (the Act) for personal injury protection (PIP) benefits Allstate paid to its insured, Rafael Medina.

The appeal arises out of a motor vehicle accident that occurred on July 14, 1992 in the City of North Bergen in which a taxi owned by Y-Michael struck a vehicle operated by Medina in the rear, propelling Medina's vehicle into an intersection where it was struck by a third vehicle. Medina instituted an action against Y-Michael to recover damages for injuries he incurred as a result of the accident. Y-Michael settled the claim by paying Medina $10,000, the maximum amount available from a surety bond Y-Michael posted pursuant to New York's motor vehicle self-insurance law, N.Y. Vehicle & Traffic Law, § 316 (McKinney 1997). Medina also received $25,079.29 in PIP benefits from Allstate, his automobile liability insurer.

Allstate then sought reimbursement from Y-Michael under the Act, which requires a tortfeasor's insurer to reimburse the injured party's insurer for PIP benefits paid to its insured, but Y-Michael refused to reimburse Allstate. Allstate then instituted an action to compel Y-Michael to arbitrate the matter. Thereafter, Y-Michael sought a declaratory judgment that it was not required to submit to arbitration, contending that, as a self-insurer which has paid Allstate's insured the full extent of the coverage provided by its bond, it should not be required to reimburse Allstate and, therefore, Allstate's claim for arbitration should be denied.

On appeal, Y-Michael asserts the same arguments presented to the Law Division judge and emphasizes that the Act, when strictly

construed, should not apply to it. Y-Michael argues that if the Legislature intended to impose liability for PIP benefits on a self-insured, it would have specifically provided for such liability in the Act. Y-Michael further asserts that the legislative policy of the Act is to protect small commercial operators like itself from reimbursement claims by permitting recovery only from insurers.

The Law Division rejected Y-Michael's contentions, concluding that, consistent with "the underlying legislative policy to reduce the cost of private insurance premiums," the burden of meeting the PIP obligation of an injured insured should be "the responsibility [of] the culpable ... self-insured tort-feasor." We agree.

Under our no-fault law, N.J.S.A. 39:6A-1 to -35, the courts of this state have consistently held that "a self-insurer's coverage obligations are co-extensive with the obligations of those possessing liability policies." Ryder/P.I.E. Nationwide, Inc. v. Harbor Bay Corp., 119 N.J. 402, 410 (1990) (reviewing cases recognizing this principle). See also White v. Howard, 240 N.J. Super. 427, 431 (App. Div.), certif. denied, 122 N.J. 339 (1990) (determining that a certificate of self-insurance is the functional equivalent of a separate insurance policy). Further, as our Supreme Court stated in Ryder:

> unlike a liability policy ... which is purchased in amounts equal to or greater than the mandatory minimum required by law, ... a self-insurer does not carry that risk of loss to a specified dollar amount. Rather, there is no explicit limitation on a self-insuror's liability. A self-insured is responsible for all 'judgments obtained against [it]',

> N.J.S.A. 39:6-52(b), to the extent that its assets are at risk to satisfy that obligation. (citation omitted)
>
> [Id. at 412.]

The Law Division judge understood and appropriately applied these principles to the facts presented by this case. Accordingly, we reject Y-Michael's contentions as clearly without merit, R. 2:11-3(a)(1)(E), and affirm substantially for the reasons expressed by Judge Winard in his comprehensive and well-reasons oral opinion rendered on November 8, 1996.

Affirmed.

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

Clerk

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NOT FOR PUBLICATION WITHOUT THE
APPROVAL OF THE APPELLATE DIVISION

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
A-3534-99T2

FIRST TRENTON INDEMNITY,

Plaintiff-Respondent,

v.

SOUTH JERSEY GAS COMPANY,

Defendant-Respondent.

Argued February 6, 2001 - Decided MAR 2 2 2001

Before Judges Conley and Lesemann.

On appeal from Superior Court of New Jersey, Law Division, Gloucester County, Docket No. L-1943-99.

Betsy G. Liebman argued the cause for appellant (Capehart & Scatchard, attorneys; Ms. Liebman, of counsel; Ms. Liebman and LaTonya N. Bland, on the brief).

Steven A. Kluxen argued the cause for respondent (Methfessel & Werbel, attorneys; Mr. Kluxen and Adam E. Levy, on the brief).

PER CURIAM

The issue on this appeal is whether a dispute concerning responsibility for Personal Injury Protection (PIP) payment is subject to resolution by arbitration, or only by suit in Superior Court. The applicable statute provides that when an insurer pays PIP benefits and then seeks reimbursement from another party who is insured, that claim is subject to arbitration. Plaintiff claims

that since defendant is "self-insured," it is subject to treatment as an insured party under the statute, and thus arbitration applies. Accordingly, plaintiff claims, the award it recovered in arbitration must stand.

Defendant, on the other hand, claims not only that the matter was not subject to arbitration, but also that, by proceeding only through arbitration and not filing a Superior Court complaint within the two year statutory period of limitations, plaintiff is now barred from any recovery. We conclude first, that defendant's "self-insured" status requires that it be treated as an insured entity for statutory purposes; but second, that plaintiff had no right to make a unilateral choice of the forum in which that arbitration would take place. Thus the award recovered in that forum without defendant's participation must be set aside and the matter remanded for further proceedings, with the parties either agreeing upon an arbitration forum or the trial court designating such a forum.

The matter began on June 16, 1996, when Clifford Lee, who was insured by plaintiff First Trenton Indemnity (First Trenton) was injured in an accident which also involved Gina Leslie, an employee of defendant South Jersey Gas Company (South Jersey). Plaintiff paid PIP damages to Lee and then sought reimbursement from South Jersey, alleging that Leslie had caused the accident. On May 14, 1998, plaintiff served defendant with a demand for arbitration.

Defendant responded that it was not subject to arbitration and would not participate in any such arbitration.

In its arbitration demand, plaintiff said it intended to proceed to arbitration through Arbitration Forums, an entity formed by a number of insurers to hear such matters. However, while First Trenton was a member of Arbitration Forums, South Jersey was not. The rules of Arbitration Forums provide that in such a case, it will hear an arbitration proceeding if, but only if, the non-signatory agrees to participation.

Notwithstanding that limitation, First Trenton proceeded with the arbitration and, with no participation by South Jersey, it recovered an award of approximately $98,600. It then proceeded in the Law Division to seek and obtain an order confirming the award.

The applicable statute, N.J.S.A. 39:6A-9.1, provides that,

> An insurer . . . paying . . . personal injury protection benefits . . . 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, . . ., or although required did not maintain personal injury protection . . . at the time of the accident. In the case of an accident . . . involving an insured tortfeasor, the determination as to whether an insurer . . . is legally entitled to recover the amount of payments and the amount of recovery . . . 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.

Thus, if the alleged tortfeasor (here South Jersey) did not maintain PIP insurance protection (either because it was not

required to do so, or, even if it were required to do so, it failed to comply with that obligation) then plaintiff, who had made such payments to its own insured, could proceed with a Superior Court action against South Jersey within two years of the time the original PIP claim was filed against it. On the other hand, if South Jersey did carry PIP insurance coverage, the determination of responsibility and the amount of any required reimbursement, would be determined either "by agreement of the involved parties" or, if the parties failed to reach such agreement, then "by arbitration."

Defendant South Jersey was "self-insured." It claims, therefore, that it was not "insured" within the meaning of the statute and if plaintiff wanted to recover from it, plaintiff had to proceed by way of court action and not via arbitration. Thus, defendant claims, plaintiff's arbitration demand was a nullity, and its failure to file suit within the two years prescribed in N.J.S.A. 39:6A-9.1 bars plaintiff from any recovery now. We find that analysis unrealistic and inconsistent with the policy of the statute. We are satisfied that for all relevant present purposes, one who is "self-insured" must be treated the same as one who is insured by some other entity. That conclusion is also consistent with other New Jersey cases that have dealt with comparable issues.

Thus, in American Nurses Ass'n. v. Passaic Gen. Hosp., 192 N.J. Super. 486, 492 (App. Div.), aff'd in part and rev'd in part, 98 N.J. 83 (1984), the court noted that a statutory self-insurer is required "to provide . . . the same 'coverage' and incidents of

'coverage' as he would have had to have purchased but for the certificate of self insurance." And other cases have noted that, "it is well-settled policy of this State to consider a self-insurance certificate as the equivalent of a policy of insurance." Ryder/P.I.E. Nationwide v. Harbor Bay Corp., Inc., 119 N.J. 402, 414 (1990). See also Christy v. City of Newark, 102 N.J. 598, 607-08 (1986) (holding that a self-insurer was obligated to provide uninsured motorist coverage because self-insurance is the equivalent of a policy of insurance); Transport of New Jersey v. Watler, 161 N.J. Super. 453, 463-64 (App. Div. 1978) (self-insured vehicles must carry uninsured motorist's insurance protection because "[s]elf-insurers . . . should be expected to cover at least the same risks that other motorists are required by law to cover"), aff'd, 79 N.J. 400, 401 (1979) (adding, "[t]he certificate of self-insurance issued to [plaintiff] pursuant to N.J.S.A. 39:6-52 is a 'policy' under which [plaintiff] is insured for purposes of N.J.S.A. 39:6-62").

In short, in the several contexts in which the question has arisen, New Jersey courts have consistently concluded that one who formally self-insures itself by complying with such requirements as obtaining a certificate of self-insurance from the Commissioner of Insurance (as defendant did here), must be treated and considered as one who is "insured" for all relevant purposes. In addition to the cases already noted, see generally, White v. Howard, 240 N.J. Super. 427, 431 (App. Div.), certif. denied, 122 N.J. 339 (1990);

Mortimer v. Perkins, 170 N.J. Super. 598, 600 (App. Div. 1979); Allstate Ins. Co. v. Altman, 200 N.J. Super. 269, 273 (Ch. Div. 1984).

We see no reason why, in interpreting and applying N.J.S.A. 39:6A-9.1, we should depart from that generally recognized principle. Since the statute calls for resolution by arbitration when the alleged tortfeasor is "insured," that directive applies when the allegedly responsible party is "self-insured." Thus, plaintiff was correct and justified in seeking arbitration, and it is not time barred because it failed to proceed in the Superior Court within two years of the date the PIP claim was filed against it.

However, we see no justification for plaintiff's unilateral choice of Arbitration Forums as the entity to conduct that arbitration. The statute makes no reference to Arbitration Forums nor, for that matter, does it name any other entity. Under those circumstances, the appropriate procedure plaintiff should have followed in order to institute and prosecute an arbitration, was to submit the matter to the trial court on a request for an order directing submission to arbitration, with the court to specify the essential details not otherwise provided by the statute, including particularly a designation of the person or entity to conduct the arbitration. There is simply no basis for plaintiff to make that decision unilaterally and bind defendant to its selection.

The determination that plaintiff's claim against defendant is subject to arbitration is affirmed. The determination that plaintiff had a right to proceed before Arbitration Forums is reversed, and the matter is remanded to the trial court for further proceedings consistent with this opinion. If the parties can agree upon an appropriate arbitration forum, then the arbitration shall proceed before that person or entity; otherwise, the trial court shall designate the person or entity to conduct the arbitration.

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CHARLES E. POWERS, JR., J.S.C.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: BERGEN COUNTY

Docket No.: L-4100-11

Civil Action

ORDER COMPELLING ARBITRATION

Government Employees Insurance Company and Government Employees Insurance Company as subrogee of Danielle Savage,

Plaintiffs,

-against-

Rovelt N. Williams, JB Hunt Transport, Inc., "John Doe"(s) 1-10, and "ABC Corporation"(s) A-Z and 1-10

Defendants,

THIS MATTER having been opened to the Court by Law Offices of Jan Meyer & Associates, P.C., attorneys for Plaintiff, by Order to Show Cause, and the Court having read the moving papers, and any papers filed in opposition thereto, and for good cause shown;

IT IS ORDERED on this 21st day of June, 2011, as follows:

1. This matter is to be resolved by arbitration pursuant to N.J.S.A. 39:6A-9.1(b).

2. Defendant JB Hunt Transport, Inc. is hereby compelled to sign a letter of consent, permitting Plaintiff to file an arbitration application regarding this matter in the New Jersey Personal Injury Protection Forum of Arbitration Forums.

3. A that a true copy of the within order shall be served upon all parties within seven (7) days from the date of receipt hereof by Plaintiffs' counsel.

J.S.C.

CHARLES E. POWERS, JR., J.S.C.

☒ OPPOSED
☐ UNOPPOSED

A LETTER IS ATTACHED HERETO AND INCORPORATED HEREIN.

Geico v. Williams

DOCKET No. BER-L-4100-11

RIDER TO ORDER DATED June 21st, 2011

The plaintiff, Government Employees Insurance Company ("Geico"), filed the instant Order to Show Cause seeking to Compel the defendant, J.B. Hunt Transport ("J.B. Hunt") to submit to arbitration. Geico argues that even though J.B. Hunt is self-insured, it should still be treated as a normal insurer and agree to arbitrate this PIP dispute. Geico further asks that the Court choose the appropriate person or entity to conduct the arbitration. In response, Hunt asserts that it is not an insured tortfeasor within the meaning of N.J.S.A. 39:6A-9.1.

A motor vehicle accident between Geico's insured, Danielle Savage, and the defendant, Rovelt Williams, occurred on May 8, 2009. Mr. Williams' vehicle was owned by J.B. Hunt; it was a tractor-trailer, and hence not an "automobile" that needed PIP insurance. Nevertheless, after the accident, Geico paid no-fault medical expense benefits payments to the defendant and now seeks to resolve this matter via arbitration. The defendant, as a self-insured entity, refuses to proceed to arbitration, arguing that it is not required to arbitrate pursuant to the strictures of N.J.S.A. 39:6A-9.1.

NB: In fact, Geico paid PIP benefits to its insured, not to the defendant.

N.J.S.A. 39:6A-9.1 provides:

> An insurer . . . paying 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 . . . 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 . . . 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 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.

The disputed issue in this PIP matter stems from the meaning of the word "insured" in the above statutory provision. The essential question, more specifically, is whether a party who self-insures is considered an "insured" under N.J.S.A. 39:6A-9.1. The answer to this question is significant, as assigning the defendant, a self-insured entity, the "insured" designation would compel it to proceed with mandatory arbitration.

In Y-Michael Tax v. Arbitration Forums and First Trenton Indemnity v. South Jersey Gas Co., the Appellate Division held that a self-insured entity was to be treated as an insurance company with respect to the arbitration requirement in N.J.S.A. 39:6A-9.1. Although these unpublished cases are not binding on the Court, they can still be instructive, as the Appellate Division held in both instances that arbitration was mandatory for a self-insured. Similarly, in Liberty Mut. Ins. Co. v. Thomson, 385 N.J. Super. 240, 243-44 (App.Div. 2006), the Court stated that "under the No-Fault Law, N.J.S.A. 39:6A-1 to -34, our courts have consistently held that "a self-insurer's coverage obligations are co-extensive with the obligations of those possessing liability policies." See also Ryder/P.I.E. Nationwide, Inc. v. Harbor Bay Corp., 119 N.J. 402, 410, (1990) (stating that "[w]ith respect to the scope of coverage obligations, it is the well-settled policy of this state to consider a self-insurance certificate as the equivalent of a policy of insurance. We find no reason to make a distinction between the two forms of insurance coverage—self-insurance and a liability policy—based on N.J.S.A. 39:6B-1, with respect to the extent of statutorily-required coverage."). The Court in White v. Howard, 240 N.J. Super. 427, 431 (App.Div.) cert. den., 122 N.J. 339 (1990) also held that "in relation to

liability coverage, a certificate of self-insurance is the "functional equivalent of . . . a separate insurance policy covering itself"). In Transp. of N.J. v. Watler, 161 N.J.Super. 453, 463-64 (App.Div.1978), the Court agreed, noting that "[s]elf-insurers...should be expected to cover at least the same risks that other motorists are required by law to cover.").[1]

In light of the abovementioned decisions, there is no compelling reason not to treat JB Hunt as an "insured" under N.J.S.A. 39:6A-9.1 in the arbitration context. The defendant is therefore compelled to proceed to arbitration with Arbitration Forums, the arbitration forum used by the vast majority of insurers in PIP cases.

The plaintiff's Order to Show Cause to Compel Arbitration is granted.

[1] Interestingly, the Criminal Code, addressing insurance fraud, defines "insurance company" to include a "self-insurer" and provides that the term "'[i]nsurance policy' means [in addition to the typical contract] any other alternative to insurance authorized or permitted by the State of New Jersey." N.J.S.A. 2C:21-4.5.