IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

FIRST STATE ORTHOPAEDICS, P.A., on behalf of itself and all others similarly situated,	)	
Plaintiff,	)	
v.	)	C.A. No. N15C-12-054 WCC CCLD
LIBERTY MUTUAL INSURANCE COMPANY, ET AL.,	)	
Defendants.	)	

Submitted: April 3, 2019
Decided: August 6, 2019
Corrected: August 27, 2019

Plaintiff's Motion for Partial Summary Judgment on the Meaning of Sections 2362(b) and 2322F(h) - GRANTED IN PART – DENIED IN PART

Defendants' Cross-Motion for Partial Summary Judgment on the Meaning of Sections 2362(b) and 2322F(h) – GRANTED IN PART – DENIED IN PART

MEMORANDUM OPINION

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Tiffany Powers, Esquire (Argued); Andrew Hatchett, Esquire; Alston & Bird LLP, 1201 West Peachtree Street, Atlanta, GA 30309. Attorneys for Defendants.

CARPENTER, J.

Before the Court is Plaintiff First State Orthopaedics, P.A.'s ("First State" or "Plaintiff") Motion for Partial Summary Judgment on the meaning of 19 Del. C. §§ 2362(b) and 2322F(h), as well as the Defendant Insurers' ("Insurers" or "Defendants") Cross-Motion for Partial Summary Judgment on the same statutory provisions. For the reasons set forth in this Opinion, Plaintiff's Motion for Partial Summary Judgment is GRANTED IN PART AND DENIED IN PART and Defendants' Cross-Motion is GRANTED IN PART AND DENIED IN PART.

I. FACTUAL & PROCEDURAL BACKGROUND

On April 3, 2017, First State filed an amended proposed class action Complaint against insurer-members of the Liberty Mutual Group of insurance companies, seeking recovery of statutory interest allegedly owed under 19 Del. C. § 2322F(h) of the Delaware Workers' Compensation Act.[1] Plaintiff brought suit on behalf of all Delaware health care providers who, at any time since December 4, 2012, submitted health care invoices to one or more Defendants for care provided to Delaware workers' compensation claimants where: (i) the invoiced Defendant failed to contest the sufficiency of the invoice's "data elements" within 30 days of receipt, (ii) though ultimately paid by the invoiced Defendant, the invoice was paid only after the expiration of the 30-day period under section 2322F(h), and (iii) the invoiced Defendant's payment of the invoice was unaccompanied by the statutory interest

[1] *See* Am. Compl. ¶¶ 1, 10-11.

provided under 2322F(h).[2] Essentially, First State is attacking the Insurers' alleged practice of generally refusing to pay the 1% interest on unpaid invoices as mandated by § 2322F(h), a claim denied by the Defendants.

A. 19 Del. C. Sections 2362(b) and 2322F(h)

Section 2362(b) states that "[a]ll medical expenses shall be paid within 30 days after bills and documentation for said expenses are received by the employer or its insurance carrier for payment, unless the carrier or self-insured employer notifies claimant or the claimant's attorney in writing that said expenses are contested or that further verification is required."[3] Meanwhile, Section 2322F(h) provides:

> An employer or insurance carrier shall be required to pay a health care invoice within 30 days of receipt of the invoice as long as the claim contains substantially all the required data elements necessary to adjudicate the invoice, unless the invoice is contested in good faith. If the contested invoice pertains to an acknowledged compensable claim and the denial is based upon compliance with the health care payment system and/or health care practice guidelines, it shall be referred to utilization review. Any such referral to utilization review shall be made within 15 days of denial. **Unpaid invoices shall incur interest at a rate of 1% per month payable to the provider.** A provider shall not hold an employee liable for costs related to nondisputed services for a compensable injury and shall not bill or attempt to recover from the employee the

[2] *Id.* ¶ 2.
[3] 19 *Del. C.* § 2362(b).

> difference between the provider's charge and the amount paid by the employer or insurance carrier on a compensable injury.[4]

B. The Instant Motion

On June 18, 2018, Plaintiff filed the instant Motion for Partial Summary Judgment regarding the meaning and effect of the two statutory provisions at issue. First State argues that, under §§ 2362(b) and 2322F(h), "if a covered invoice – meaning, for the purposes here, an invoice that is ultimately paid (or covered) in whole or in part – is not paid within the 30-day window, it is an "unpaid" invoice for which statutory interest accrues."[5] Plaintiff further contends that there is no "good faith" exception to the statutory interest provision set out in § 2322F(h).[6] Thus, according to First State, even if a workers' compensation claim is timely denied in "good faith" but eventually gets paid outside the 30-day window, statutory interest for that invoice began to accumulate on the thirty-first day after the Insurers initially received it.[7]

In response, Defendants filed a Cross-Motion for Partial Summary Judgment regarding its interpretation of the two statutes. The Insurers contend that §§ 2362(b) and 2322F(h) "by their plain terms, confirm that interest is ***not*** owed under

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[4] 19 *Del. C.* § 2322F(h) (emphasis added).
[5] Pl.'s Opening Br. Mot. for Partial Summ. J. at 4.
[6] *See id.* at 7-11.
[7] *See* Mot. for Partial Summ J. Hr'g Tr. at 13, 20.

circumstances where an insurer, within 30 days of receiving the invoice, either (i) contests the invoice in good faith, or (ii) requests further verification to support the charge."[8] According to Defendants, "if an insurance carrier has a good-faith basis to deny coverage for the invoice or request additional documentary support, no statutory interest is owed until 30 days after the provider submits the documentation necessary to validate the charge"[9] or its denial has been overturned by the Industrial Accident Board ("the Board").

The Court heard oral arguments on Plaintiff and Defendants' Cross-Motions for Partial Summary Judgment on §§ 2362(b) and 2322F(h), and it reserved decision. This is the Court's decision on the Motions.

II. STANDARD OF REVIEW

In reviewing a motion for summary judgment pursuant to Superior Court Civil Rule 56, the Court must determine whether any genuine issues of material fact exist.[10] The moving party bears the burden of showing that there are no genuine issues of material fact, such that he or she is entitled to judgment as a matter of law.[11] The Court must view all factual inferences in a light most favorable to the non-moving party.[12] Where it appears that there is a material fact in dispute or that further

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[8] Defs.' Opp'n Br. Mot. for Partial Summ. J. at 3.
[9] *Id.* at 11.
[10] Super. Ct. Civ. R. 56(c); *see also Wilm. Tru. Co. v. Aetna*, 690 A.2d 914, 916 (Del. 1996).
[11] *See Moore v. Sizemore*, 405 A.2d 679 (Del. 1979).
[12] *See Alabi v. DHL Airways, Inc.*, 583 A.2d 1358, 1361 (Del. 1990).

inquiry into the facts would be appropriate, summary judgment will not be granted.[13] Additionally, "the standard for summary judgment 'is not altered'" with cross-motions for summary judgment.[14]

III. DISCUSSION

In Delaware, the rules of statutory interpretation are well settled.[15] The Court should "ascertain and give effect to the intent of the legislators, as expressed in the statute."[16] First, it must be determined if the statutory provision at issue is ambiguous.[17] "A statute is ambiguous if it is reasonably susceptible of two interpretations. If it is unambiguous, no statutory construction is required, and the words in the statute are given their plain meaning."[18] When a statute is ambiguous:

> [E]ach part or section [of a statute] should be read in light of every other part or section to produce an harmonious whole. Undefined words in a statute must be given their ordinary, common meaning. Additionally, words in a statute should not be construed as surplusage if there is a reasonable construction which will give them meaning, and courts must ascribe a purpose to the use of statutory language, if reasonably possible.[19]

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[13] *See Ebersole v. Lowengrub*, 180 A.2d 467, 470 (Del. Super. Ct. 1962), *rev'd in part* on procedural grounds and *aff'd in part*, 208 A.2d 495 (Del. 1965).
[14] *Total Care Physicians, P.A. v. O'Hara*, 798 A.2d 1043, 1050 (Del. Super. Ct. 2001) (citing *United Vanguard Fund, Inc. v. TakeCare, Inc.*, 693 A.2d 1076, 1079 (Del. 1997)).
[15] *Dewey Beach Enters., Inc. v. Bd. of Adjustment of Town of Dewey Beach*, 1 A.3d 305, 307 (Del. 2010).
[16] *Id.* (citing *Chase Alexa, LLC v. Kent County Levy Court*, 991 A.2d 1148, 1151 (Del. 2010)).
[17] *Id.*
[18] *Id.*
[19] *Id.* at 307-08 (quoting *Oceanport Indus., Inc., v. Wilmington Stevedores, Inc.*, 636 A.2d 892, 900 (Del. 1994)).

Although the Court believes these sections of the Delaware Code could have been written with more precision and clarity, it does not find the provisions to be in conflict nor are they ambiguous to the point of requiring findings outside of what is stated in the statutes. There is really no dispute that the legislature, in enacting the statutes, intended to place a time limit on the payment of health care provider invoices and to institute a minor penalty when they are not paid timely. The legislature also realized that not every invoice submitted by a provider would be done so with clarity and precision, and thus provided the Insurer a mechanism to avoid the interest penalty. As such, under § 2362(b), if the Insurer contests the invoice <u>or</u> requests further verification, the time for payment and any associated penalty would in essence be stayed until the issue was resolved.

Plaintiff argues that, while it recognizes the Insurers' ability to contest an invoice, the penalty provision set forth in § 2322F(h) has no relationship to the reason an invoice may go unpaid. From First State's perspective, the statutes require interest to begin to run on the thirty-first day after receipt of an invoice by the insurance company, even if this would at times result in potential unfairness. Plaintiff argues that the Insurers are certainly free to contest the invoice, but it remains "unpaid," and the interest portion of the statute would begin accruing at that time. While such an interpretation would establish a clear bright-line and perhaps avoid some confusion as to when interest would accrue, it would also result in a

situation the Court finds was not intended by the legislature. So, the question remains: when do interest penalties begin to run?

A. Additional Information

The initial part of the statute requires the insurance company to pay an invoice within thirty days of receipt of that invoice **as long as the claim contains substantially all the required data elements necessary to adjudicate the invoice.** Logically, if the claim information is deficient, this would delay the 30-day clock, as the insurance company is presumably unable to process the claim due to a lack of information from the provider. As such, the invoice is not in an "unpaid" status at that time as "all the requirement data elements necessary to adjudicate the invoice" are not present. However, once the information requested is provided to the insurance company, the clock begins to run again, and unless further information is demanded or the claim is denied, interest would again become due on the thirty-first day after the provider submitted the requested information.

B. Good Faith Denial

The good faith denial situation, however, is different, as it assumes that the insurance company has received all of the information it needs to process an invoice and make a decision. So, the only basis for denying a claim is that the insurer believes the information provided does not justify payment. As long as the invoice remains in a disputed classification, no payment is required. However, the issue that

remains is what interest is due if the Board subsequently finds that an insurance company's denial was not justified and orders payment. When this occurs, the Court finds that the interest calculation relates back to the thirty-first day after the invoice was initially received by the insurer. The Board's decision to order payment essentially suggests that the insurance company did not have a good faith basis to deny the claim.[20] So, logically, Plaintiff should not be penalized in that situation, and the interest rate must fairly return to the date the insurance company was required to pay the claim. Obviously, if the Board decided the claim was appropriately denied, no payment would be required and no interest would accrue.

If the statutes were not interpreted in this fashion, it would give the Insurers a limitless ability to deny payments and experience no penalty if their denial was later found to be invalid. Clearly, the legislature intended some adverse consequence for the inappropriate denial of benefits in a timely manner, and only interpreting the statute in the manner the Court has done above would result in the penalty contemplated by the General Assembly.

The Court recognizes there are also scenarios in which the Insurers may, for whatever reason and without the Board's prompting, decide to submit a late payment

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[20] The Court notes that, in such a scenario, the Board's decision to order payment does not automatically establish a "bad faith" denial by an insurer. The party alleging that a denial was made in "bad faith" still must show that "the insurer's denial of benefits was 'clearly without any reasonable justification.'" *Tackett v. State Farm Fire and Cas. Ins. Co.*, 653 A.2d 254, 264 (Del. 1995).

on an invoice they had previously denied in "good faith." In these instances, the same "formula" for determining when statutory interest begins to accumulate would be applied.

Finally, the Court acknowledges that such a "bright-line" rule becomes unfair for each party under certain circumstances. However, the insurance carrier should not receive any advantage by not having to pay interest for denying a claim that the Board subsequently finds it should have paid. Even under the holding the Court has reached here, the Board retains the inherent authority to modify interest based on any unique or unusual circumstances presented to it.

IV. CONCLUSION

For the foregoing reasons, Plaintiff's Motion for Partial Summary Judgment on the meaning of 19 Del. C. §§ 2362(b) and 2322F(h) is **GRANTED IN PART AND DENIED IN PART**. Defendants' Cross-Motion for Partial Summary Judgment is **GRANTED IN PART AND DENIED IN PART**.

IT IS SO ORDERED.

Judge William C. Carpenter, Jr.