

NOT FOR PUBLICATION WITHOUT THE
APPROVAL OF THE APPELLATE DIVISION

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-3331-09T2

SELECTIVE INSURANCE COMPANY,

Plaintiff-Appellant,

v.

HARTFORD UNDERWRITERS INSURANCE
COMPANY,

Defendant-Respondent.

Argued: February 3, 2011 - Decided: March 3, 2011

Before Judges Simonelli and Fasciale.

On appeal from the Superior Court of New
Jersey, Law Division, Camden County, Docket
No. L-5457-09.

Robert P. Clark argued the cause for
appellant (Clark & DiStefano, P.C.,
attorneys; Mr. Clark, on the brief).

Timothy R. Holman argued the cause for
respondent (Law Offices of Jonathan R.
Westpy, attorneys; Mr. Holman, on the brief).

PER CURIAM

Rather than seek reimbursement from the Division of
Workers' Compensation (Division) for personal injury protection
(PIP) benefits it paid to an alleged employee, plaintiff
Selective Insurance Company (Selective) obtained a PIP
arbitration award from Arbitration Forums, Inc. (AFI).

Selective appeals from Judge Orlando's order denying its request to confirm the arbitration award and dismissing its complaint. We affirm.

Manuel Rivera injured himself while driving a car owned by Angel Rivera. Selective provided automobile insurance to Angel and paid PIP benefits to Manuel. Selective believed that Manuel was driving while in the course of his employment with J&R Auto Body (J&R) when the accident occurred. Selective then attempted to collect PIP reimbursement, in two separate forums, from J&R's workers' compensation carrier, defendant Hartford Underwriters Insurance Company (Hartford).¹

Selective contended that Hartford and Selective were members of an inter-company arbitration agreement administered by AFI and filed a demand for PIP arbitration with AFI for PIP reimbursement. Selective notified AFI that Hartford and its workers' compensation adjuster, Nicholas Rhyde, were located at 301 Woodpark Drive, Clinton, New York; however, neither Rhyde nor Hartford's workers' compensation claims office were located at that address. As a result, Hartford never received the demand for PIP arbitration.

¹Defendant is actually named The Hartford Insurance Group but was improperly pled as Hartford Underwriters Insurance Company.

Understanding that AFI might lack jurisdiction to determine whether Manuel was in the course of his employment at the time of the accident, Selective filed a claim petition, as a subrogee, with the Division. Selective sought the same PIP reimbursement it had requested in the arbitration claiming that Manuel was driving while in the course of his employment with J&R. Hartford answered the petition and listed its address as 300 S. State Street, Syracuse, New York.

Hartford did not respond to the demand for PIP arbitration or appear at the arbitration. The arbitrator awarded Selective \$16,094.28. Although Selective had actual notice of the correct location of Hartford's workers' compensation claims office in Syracuse, New York, the PIP award listed Clinton, New York, and Selective served Rhyde there instead of the Syracuse address.

Hartford refused to pay the arbitration award arguing it had not received the demand for PIP arbitration and AFI lacked jurisdiction to resolve the dispute. Hartford contended that the Division had exclusive jurisdiction to determine whether the accident occurred while Manuel was in the course of his employment, and if so, to decide the claim for PIP reimbursement.

After AFI entered the award, Selective advised the Division that it intended to withdraw the claims petition. Selective

then filed a verified complaint and order to show cause (OTSC) seeking to confirm the award. Between the filing of the OTSC and its return date, the Division granted Hartford's unopposed motion to dismiss the claim petition for lack of prosecution.

Judge Orlando refused to confirm the award, dismissed the complaint, and issued a comprehensive oral opinion on February 26, 2010. The judge held that Hartford was not served with the demand for arbitration and that the AFI arbitrator exceeded his authority because the Division had exclusive jurisdiction.

On appeal, Selective argues that the judge erred by not confirming the award. Selective contends that the parties agreed to arbitrate, Hartford was served with the arbitration notice, and Hartford never challenged the award.

We have carefully reviewed the arguments of counsel and the controlling legal principles and affirm substantially for the reasons expressed by Judge Orlando in his oral opinion. We add the following comments.

The arbitration award is void because Selective failed to properly serve Hartford with the demand for PIP arbitration. Despite having notice of the Hartford's address in Syracuse, New York, Selective served the demand for PIP arbitration and the arbitration award at an address where neither the Hartford nor its workers' compensation office and adjuster were located.

Also, the AFI arbitrator exceeded his authority by entering the arbitration award. PIP benefits may be reduced under the collateral source rule by benefits "collectible under workers' compensation insurance." N.J.S.A. 39:6A-6. Only the Division can determine what benefits are collectible. Speiser v. Harleysville Ins. Co., 237 N.J. Super. 507, 510 (App. Div.), certif. denied, 121 N.J. 647 (1990); Olivero by Olivero v. New Jersey Mfrs. Ins. Co., 199 N.J. Super. 191, 200 (App. Div. 1985); Aetna Cas. & Sur. Co. v. Para Mfg. Co., 176 N.J. Super. 532, 536 (App. Div. 1980);

From this record, we conclude that Selective understood that Hartford had a jurisdictional defense because its counsel explained to the workers' compensation judge that "[t]he sole purpose for filing the petition with the workers' compensation court was to protect the statute of limitations for PIP reimbursement claims in case Hartford raised a jurisdictional defense in [AFI]."

The proper forum, then, for Selective to seek PIP reimbursement was in the Division. We also reject the argument presented by Selective that the parties consented, as signatories to the inter-company arbitration agreement, to arbitrate its PIP reimbursement dispute before the AFI. Jurisdiction cannot be conferred on the court by agreement or

waived. R. 4:6-2(a); Bless v. Bless, 318 N.J. Super. 90, 104
(App. Div. 1998); Borough of Closter v. Abram Demaree Homestead,
Inc., 365 N.J. Super. 338, 352 (App. Div.), certif. denied, 179
N.J. 372 (2004).

Affirmed.

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



CLERK OF THE APPELLATE DIVISION