

**COURT OF CHANCERY
OF THE
STATE OF DELAWARE**

WILLIAM B. CHANDLER III
CHANCELLOR

COURT OF CHANCERY COURTHOUSE
34 THE CIRCLE
GEORGETOWN, DELAWARE 19947

Submitted: November 10, 2010
Decided: January 14, 2011

Ronald W. Hartnett, Jr.
Reger Rizzo & Darnall LLP
1001 Jefferson Street, Suite 202
Wilmington, DE 19801

Richard D. Abrams
Mintzer, Sarowitz, Zeris, Ledva & Meyers, LLP
1220 North Market Street, Suite 300
Wilmington, DE 19801

Re: *Donegal Mutual Ins. Co., et al.*
v. Progressive Northern Ins. Co.
Civil Action No. 5049-CC

Dear Counsel:

I have reviewed your briefing on the pending cross motions for summary judgment. This is my decision on the motions. This dispute, in my opinion, is clearly governed by statute (21 *Del. C.* § 2118(g)(5)) and by precedent (*Travelers Ins. Co. v. Nationwide Mutual Ins. Co.*, 886 A.2d 46 (Del. Ch. 2005)).

First, under § 2118(g)(5), if the amount paid in settlement or other resolution of an injured party's claim, together with the subrogated claim, exceeds the tortfeasor's policy limits, the carrier receiving subrogated payments must reimburse the tortfeasor's carrier for any amount in excess of the policy limits. Progressive (the tortfeasor's carrier) has paid the policy limits to Mr. and Mrs. Blanchfield and to Ms. Mast. That is undisputed. Legally, Progressive has no further liability to Donegal. Forcing Progressive to pay \$15,210.10 (plus interest and costs), as awarded by the Arbitrators, would be a futile act, since by statute Progressive (which, to repeat, has *already paid* the maximum policy limits of \$15,000 to Donegal for each of the injured parties) would be entitled to seek reimbursement immediately from Donegal for "that portion of the claim exceeding the maximum amount of the tortfeasor's liability, insurance coverage." 21 *Del. C.* § 2118(g)(5). So, if Progressive is forced to pay the \$15,210.10 arbitration award, it will have an immediate reimbursement claim against Donegal for the full amount (since all of

it will exceed the already paid maximum policy limits under the Progressive policy). In light of this statutory requirement, which was (or should have been) known to the arbitrators, the arbitration awards are contrary to law and must be vacated.

Second, the foregoing result is consistent with (if not required by) the logic and reasoning of Vice Chancellor Lamb's decision in *Travelers Ins. Co. v Nationwide Mutual Ins. Co.*, 886 A.2d 46 (Del. Ch. 2005). There, Travelers sought to enforce an arbitration award. Before the arbitration, however, Nationwide settled with Travelers' insured for the applicable policy limits. Nevertheless, the arbitration went forward and Travelers was awarded \$6, 219.59 in reimbursement for PIP benefits paid on behalf of its insured. Travelers admitted it had no right to recover its subrogation claim under 21 *Del. C.* § 2118(g)(1). Relying on § 2118(g)(1), as well as § 2118(g)(5), Vice Chancellor Lamb refused to enforce the arbitration award. He concluded that "it would be entirely inequitable to allow Travelers to recover money that it concedes it would not be entitled to if the arbitration panel had properly applied the clear law." 886 A.2d at 50. He further noted that even were the Court to uphold the arbitration award, "Travelers would be required to reimburse Nationwide for the entire sum in dispute." *Id.*

For the exact same reasons here, Progressive would be entitled to reimbursement for the entire amount in dispute if I were to enforce the arbitration award. That is the plain result under § 2118(g)(1) and § 2118(g)(5). For all the reasons stated by Vice Chancellor Lamb in *Travelers*, I deny the motion to enforce the arbitration award against Progressive and I grant Progressive's motion to vacate the award.

An Order has been entered consistent with this Letter Opinion.

Very truly yours,

A handwritten signature in cursive script that reads "William B. Chandler III". The signature is written in black ink and includes a horizontal line under the name.

William B. Chandler III

WBCIII:meg