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**ALLSTATE NEW JERSEY INSURANCE COMPANY, Plaintiff-Appellant, v. OLD
REPUBLIC INSURANCE COMPANY, Defendant-Respondent.**

DOCKET NO. A-5158-12T1

SUPERIOR COURT OF NEW JERSEY, APPELLATE DIVISION

2014 N.J. Super. Unpub. LEXIS 906

March 24, 2014, Argued

April 22, 2014, Decided

NOTICE: NOT FOR PUBLICATION WITHOUT
THE APPROVAL OF THE APPELLATE DIVISION.

PLEASE CONSULT NEW JERSEY *RULE 1:36-3*
FOR CITATION OF UNPUBLISHED OPINIONS.

PRIOR HISTORY: [*1]

On appeal from Superior Court of New Jersey, Law
Division, Essex County, Docket No. L-2123-13.

COUNSEL: David J. Dickinson argued the cause for
appellant (McDermott & McGee, L.L.P., attorneys;
Gabrielle J. Pribula, on the brief).

William F. Mueller argued the cause for respondent
(Clemente Mueller, P.A., attorneys; Mr. Mueller, of
counsel and on the brief; Matthew H. Mueller, on the
brief).

JUDGES: Before Judges Yannotti and Ashrafi.

OPINION

PER CURIAM

Plaintiff Allstate New Jersey Insurance Company
appeals from dismissal of its complaint seeking to
compel defendant Old Republic Insurance Company to
arbitrate their respective responsibility for personal injury
protection (PIP) payments and costs following a motor

vehicle accident. We affirm.

For purposes of the appeal, the facts are not disputed.
Allstate's insured, Masudur Rahman, was injured in a
motor vehicle accident on March 27, 2008. A
tractor-trailer driven by Dennis Keihl and insured by Old
Republic failed to stop in slowed traffic and caused
several collisions. Allstate received Rahman's initial
claim on April 22, 2008. It made payments to or on
behalf of Rahman and incurred administrative costs under
the PIP coverage of Rahman's policy.

On January 16, 2009, [*2] Allstate served upon Old
Republic a demand to arbitrate through Arbitration
Forums, Inc. Allstate's claim for reimbursement of its PIP
payments and costs. Arbitration Forums is a not-for-profit
organization of member insurance companies that
administers thousands of such inter-company arbitrations.
Old Republic did not formally respond to Allstate's
demand for arbitration.

On March 10, 2009, Allstate withdrew its arbitration
demand because Old Republic is not a signatory or
member of Arbitration Forums and would not consent to
arbitration in that forum. Allstate did not take any other
formal action with respect to arbitration until four years
later, when it filed its complaint commencing this court
action on March 28, 2013.

During the intervening time, Allstate occasionally

contacted Old Republic about its claim for reimbursement. In addition to several telephone calls, Allstate sent letters to Old Republic on March 3, 2010, and on January 3, 2012, each time asking whether Old Republic would agree to reimburse Allstate for more than \$18,000 in PIP expenses it had incurred on behalf of Rahman. Old Republic made no formal or written response to Allstate's inquiries.

In January 2010, Rahman [*3] filed a personal injury lawsuit against Old Republic's insured, Keihl, and others. Rahman and Keihl settled that lawsuit in January 2012, and Allstate learned about the settlement in June 2012. Subsequently, when Old Republic declined to reimburse Allstate for its PIP payments and costs, Allstate filed this suit to compel arbitration.

In the Law Division, Judge Christine Farrington heard argument on the return date of an order to show cause. Old Republic argued that Allstate had not maintained a timely demand for arbitration within two years of Rahman's initial claim, as required by *N.J.S.A. 39:6A-9.1(a)*. By letter opinion and order dated May 10, 2013, Judge Farrington agreed with that argument and dismissed Allstate's complaint. The judge held that Allstate's filing of an improper demand for arbitration in January 2009 did not toll the running of the limitations period of the statute, in particular, because Allstate withdrew that demand and did not renew it within two years.

On appeal, Allstate argues the judge's decision was legally erroneous because its timely demand for arbitration in January 2009 tolled the running of the limitations period, and also because it could not demand [*4] reimbursement from Old Republic until after resolution of the related personal injury claim against Keihl. We agree with Judge Farrington's conclusions rejecting Allstate's arguments and affirm her dismissal order essentially for the reasons stated in her written opinion. We add the following comments about the statutes as applied to the circumstances of this case.

N.J.S.A. 39:6A-9.1(a) provides in relevant part:

An insurer . . . paying . . . personal injury protection benefits . . . [or] medical expense benefits . . . shall, *within two years of the filing of the claim*, have the right to recover the amount of the payments from any tortfeasor who was

not, at the time of the accident, required to maintain personal injury protection or medical expense benefits coverage . . . under the laws of this State . . .

[Emphasis added.]

Because Keihl was driving a tractor-trailer, which was not subject to mandatory PIP coverage, Allstate was entitled to seek reimbursement of its PIP payments from Keihl. However, its claim for reimbursement had to be brought within two years of the date that Rahman first made a PIP claim to Allstate. *See N.J. Mfrs. Ins. Grp./Garrison Lange v. Holger Trucking Corp.*, 417 N.J. Super. 393, 394-96, 401, 9 A.3d 1095 (App. Div. 2011).

Where [*5] the alleged tortfeasor has insurance coverage, the PIP carrier seeking reimbursement must proceed directly against the tortfeasor's insurance carrier, and inter-company arbitration is mandatory. *N.J.S.A. 39:6A-9.1(b)* provides in relevant part:

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 . . . 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*. Any recovery by an insurer . . . pursuant to this subsection shall be subject to any claim against the insured tortfeasor's insurer by the injured party and shall be paid only after satisfaction of that claim, up to the limits of the insured tortfeasor's motor vehicle or other liability insurance policy.

[Emphasis added.]

The last-quoted sentence of this statute was added by amendment effective January 28, 2011. It was not part of statute at the time of the accident in this case or within two years of the date that Rahman [*6] made his initial PIP claim. The amendment essentially means that PIP reimbursement to an insurance carrier must await the resolution of any tort liability the person who caused the

accident has to the injured parties.

The "preferred" legislative method for resolving PIP disputes is by agreement of the insurance carriers. *N.J. Auto. Full Ins. Underwriting Ass'n v. Liberty Mut. Ins. Co.*, 270 N.J. Super. 49, 53, 636 A.2d 550 (App. Div. 1994). If they cannot reach an agreement, then the carrier seeking reimbursement must make a formal demand for arbitration within the two-year limitation period. *Ibid.*

In this case, Allstate sent its demand for arbitration to Old Republic on January 16, 2009, within two years of receiving Rahman's claim. But the demand was not effective because Old Republic had no obligation to arbitrate the dispute before Arbitration Forums. As a result, Allstate withdrew the demand. At the termination of the two-year limitation period of *N.J.S.A. 39:6A-9.1(a)*, April 22, 2010, there was no pending demand for arbitration and no court order requiring Old Republic to arbitrate the dispute. In the absence of Old Republic's agreement either to reimburse the PIP payments or to arbitrate, *see* [*7] *Allstate Ins. Co. v. Universal Underwriters Ins. Co.*, 330 N.J. Super. 628, 636-37, 750 A.2d 223 (App. Div. 2000), Allstate was required to make a formal demand to arbitrate. *N.J. Auto. Full Ins. Underwriting Ass'n, supra*, 270 N.J. Super. at 53.

Neither the insurers' informal communications nor the earlier withdrawn demand tolled the running of the limitations period. *Cf. Rivera v. Prudential Prop. & Cas. Ins. Co.*, 104 N.J. 32, 39-41, 514 A.2d 1296 (1986) (Plaintiffs' claim, including a second-filed complaint, was barred by the statute of limitations in the absence of "wrongful or misleading or dilatory conduct of defendant" that caused a delay in its filing.).

The 2011 amendment of *N.J.S.A. 39:6A-9.1(b)* did not affect the running of the limitations period, even if that amendment were to be applied to a claim that was otherwise barred by the statutory limitations period. Allstate was required to preserve its claim against Old Republic either by obtaining the latter's agreement to arbitrate, or by obtaining a court order compelling arbitration upon resolution of the related personal injury action.

Having reached these conclusions, we need not address Old Republic's alternative argument that Allstate's complaint should [*8] be barred by the doctrine of laches.

Affirmed.