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parties in the case and its use in other cases is limited. R. 1:36-3.

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-4801-16T3

21ST CENTURY PINNACLE
INSURANCE COMPANY,

Plaintiff-Respondent,

v.

A.C. WINGS, LLC, d/b/a HOOTERS
RESTAURANT and ALLIED WORLD
ASSURANCE COMPANY,

Defendants-Appellants.

Submitted February 7, 2018 – Decided March 13, 2018

Before Judges Nugent, Currier, and Geiger.

On appeal from Superior Court of New Jersey,
Law Division, Atlantic County, Docket No.
L-1062-15.

Marks, O'Neill, O'Brien, Doherty & Kelly, PC,
attorneys for appellant Allied World Assurance
Company (Melissa J. Brown and Nicole M.
Triner, on the briefs).

Law Offices of Steven G. Kraus, attorneys for
respondent (Sandra S. Grossman, on the brief).

PER CURIAM

Plaintiff, 21st Century Pinnacle Insurance Company,
instituted suit against defendants, A.C. Wings, LLC, d/b/a Hooters

Restaurant and Allied World Assurance Company, seeking reimbursement of personal injury protection (PIP) benefits under N.J.S.A. 39:6A-9.1 (Section 9.1), that it paid to its insureds for injuries sustained in a motor vehicle accident. Plaintiff alleged that the accident was caused by a driver who had become intoxicated while a patron at Hooters. After discovery, plaintiff's motion to compel arbitration under Section 9.1 was granted. Defendants appealed. We affirm the trial court's June 23, 2017 order granting plaintiff's application and compelling arbitration.

N.J.S.A. 39:6A-9.1 creates a statutory right of reimbursement for PIP insurers against certain tortfeasors by allowing an insurer who pays PIP benefits 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 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.

[N.J.S.A. 39:6A-9.1.]

This provision helps promote an important "goal of the No-Fault Law[,]" which "is to avoid excessive litigation related to accidents and insurance." Unsatisfied Claim & Judgment Fund Bd. v. N.J. Mfrs. Ins. Co., 138 N.J. 185, 205 (1994). "[T]he reimbursement right conferred by section 9.1 encompasses all tortfeasors that are not subject to the No-Fault law[,]" and was intended to alleviate the court system of reimbursement litigation by requiring claims to be arbitrated. State Farm Mut. Auto. Ins. Co. v. Licensed Beverage Ins. Exch., 146 N.J. 1, 14-15 (1996).

Defendants argue that the statute is inapplicable to them as they are not "tortfeasors" as contemplated by the statute. They rely on AAA Mid-Atlantic Ins. of N.J v. Prudential Prop. & Cas. Ins. Co., 336 N.J. Super. 71, 76 (App. Div. 2000), in contending that the trial court should retain jurisdiction to determine all of the legal issues in the matter. We disagree.

In AAA Mid-Atlantic Ins. of N.J., Prudential argued that all legal issues were to be resolved through the statutorily mandated arbitration provision under Section 9.1. Id. at 76. AAA invoked a statutory immunity from liability as its insureds were social hosts under N.J.S.A. 2A:15-5.7. Id. at 75. If the insureds were immune, they asserted they could not be tortfeasors under Section 9.1, and Prudential would have no legal entitlement to recovery. Ibid. We invoked our original jurisdiction under Rule 2:10-5 and

resolved the issue, finding that since the parents were statutorily immune from liability for injuries suffered by their son resulting from alcoholic beverages they served him, "the son's PIP carrier [could] not seek direct reimbursement because [the parents were] not 'tortfeasors' under [Section] 9.1." Id. at 78.

The circumstances here are easily distinguishable. Allied insured Hooters. Plaintiff alleges that a patron of Hooters was negligently served alcohol. The patron's intoxication was the cause of a motor vehicle accident in which plaintiff's insureds were injured and killed. Plaintiff seeks reimbursement from defendants of the PIP benefits it paid to its insureds. Hooters is a "tortfeasor" potentially responsible for reimbursing PIP benefits paid by a private passenger automobile carrier to its insureds because of the restaurant's negligence. The issue is whether there is sufficient evidence to prove that Hooters was negligent under the New Jersey Licensed Alcoholic Beverage Server Fair Liability Act (Dram Shop Act), N.J.S.A. 2A:22A-1 to -7. That is a question of fact for the arbitrator.

Were we to find otherwise, the Law Division would first have to adjudicate the factual dispute as to whether Hooters was negligent under the Dram Shop Act and therefore a tortfeasor, a proceeding that could well involve a trial. This would undermine the statutory scheme by creating an extra and potentially lengthy

step in the process. The statute does not envision the court first resolving the liability issue in a plenary proceeding. The statutory arbitration provisions were designed to avoid such a process, and the motion judge correctly mandated defendants' participation in the arbitration proceeding.

Affirmed.

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



CLERK OF THE APPELLATE DIVISION