



## DOMESTIC/FOREIGN INSURERS BULLETIN NO. 77

**TO: ALL INSURANCE CARRIERS WRITING AUTOMOBILE POLICIES IN DELAWARE**

**RE: Mandatory Arbitration Required Under 21 Del. C. § 2118**

**DATED: September 1, 2015**

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This Bulletin is to remind all insurers writing the coverages required under 21 Del. C. § 2118 that they are required to submit to mandatory arbitration all subrogation claims among insurers or self-insurers pursuant to 21 Del. C. § 2118(g)(3). That provision provides that:

Disputes among insurers as to liability or amounts paid pursuant to paragraphs (a)(1)-(4) of this section shall be arbitrated by the Wilmington Auto Accident Reparation Arbitration Committee or its successors. Any disputes arising between an insurer or insurers and a self-insurer or self-insurers shall be submitted to arbitration which shall be conducted by the Commissioner in the same manner as the arbitration of claims provided for in subsection (j) of this section.

The above-quoted provision requires all insurers and self-insurers to submit subrogation claims among insurers or self-insurers to mandatory arbitration. Despite this mandate, it has come to the Department's attention that automobile insurance carriers in Delaware are disregarding this provision and filing lawsuits in the various courts in Delaware for subrogation claims. Delaware courts have previously established their lack of jurisdiction to hear cases that are subject to the mandatory arbitration provisions of 21 Del. C. § 2118(g)(3). See *Zurich America Inc. C. v. St. Paul Surplus Lines, Inc.*, 2009 WL 4895120, \*1 (Del. Ch. April 14, 2010) (In discussing PIP subrogation claims, the court noted "[t]he Delaware Legislature has determined that such claims may not be heard in court, but instead must be handled in arbitration by a statutorily-selected arbitration forum."). See also *State Farm Mut. Auto. Insurance Co. v. United Postal Service of America, Inc.*, 2012 WL 1495338 (Del. Super. April 30, 2012).

Despite the courts having established their lack of jurisdiction to hear claims that are required to be submitted to arbitration, insurers are continuing to pursue these claims in court. Insurers are also appealing Section 2118 arbitration awards despite the fact that arbitration awards issued pursuant to these mandatory arbitration provisions are final, non-appealable awards. See *New Hampshire Ins. Co. v. State Farm Ins. Co.*, 643 A.2d 328 (Del. Super. 1993); *21st Century Assur. Co. v. Liberty Mut. Ins. Co.*, 2015 WL 1405925 (Del. Super. March 23,

2015). These impermissible court filings, both initial actions and appeals, can have the effect of driving up costs of litigation and, ultimately, insurance costs for consumers. If the Department determines there exists a pattern or practice of insurers disregarding their obligation to submit to mandatory arbitration, the Department will consider appropriate action against insurers to ensure future compliance.

This Bulletin shall be effective immediately and shall remain in effect unless withdrawn or superseded by subsequent law, regulation or bulletin.



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**Karen Weldin Stewart, CIR-ML**  
**Delaware Insurance Commissioner**