

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

STATE FARM MUTUAL AUTOMOBILE :
INSURANCE COMPANY as subrogee :
of Steven W. Wurst, :
 :
Plaintiff, :
 :
v. : Civil Action No. 02-454-JJF
 :
UNITED STATES OF AMERICA, :
 :
Defendant. :

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Attorney for Plaintiff.

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Attorneys for Defendant.

MEMORANDUM OPINION

July 22, 2003
Wilmington, Delaware

FARNAN, District Judge

Pending before the Court is Defendant's Motion to Dismiss (D.I. 12). Briefing has been completed on the Motion, and the Court finds that, based on the nature of the arguments presented, oral argument is not necessary. For the reasons discussed below, the United States' Motion to Dismiss will be denied.

The issue presented by Defendant's Motion is whether State Farm Mutual Automobile Insurance Company ("State Farm") can subrogate against the United States to recover no-fault insurance benefits paid to a private citizen whose vehicle was struck by a United States Postal Service ("USPS") vehicle. The facts giving rise to the instant dispute are not contested. On June, 8, 1999, Andrew Washington, a postal worker operating a USPS truck within the scope of his duties, rear-ended a vehicle driven by Steven Wurst. The responding police officer issued Mr. Washington a traffic citation for following Mr. Wurst too closely. Mr. Wurst was injured, and State Farm, his insurance provider, paid Mr. Wurst's medical costs, which came to \$21,341.45. These costs were paid under Mr. Wurst's no-fault policy. State Farm filed the instant subrogation action against the United States on May 24, 2002, to recover the benefit amounts paid to Mr. Wurst. On October 25, 2002, the United States filed a Motion to Dismiss (D.I. 12) pursuant to Federal Rule of Civil Procedure 12(b)(1). The United States contends that the Court lacks subject matter

jurisdiction, because there has been no waiver of sovereign immunity under the Federal Tort Claims Act, 28 U.S.C. §§ 2671-2680 ("FTCA").

Lawsuits against the United States for money damages are barred by the doctrine of sovereign immunity, except to the extent that the United States explicitly waives its sovereign immunity and consents to be sued. See e.g., United States v. Testan, 424 U.S. 392, 400 (1976). The exclusive waiver of sovereign immunity for actions in tort against the United States, its agencies, and employees acting within the scope of their employment, is the FTCA, codified at 28 U.S.C. § 1346(b) and §§ 2671-2680. Thus, if the United States is liable under the FTCA, then the Court has subject matter jurisdiction, and Defendant's motion must be denied.

Under the FTCA, the United States may be found liable in tort only "in the same manner and to the same extent as a private individual in like circumstances." 28 U.S.C. § 2674. When the United States is not identically situated to a private party, the Court must "find a fitting analog under private law." Carter v. United States, 982 F.2d 1141, 1144 (7th Cir. 1992). "The basic purpose of the FTCA is to subject the United States to tort liability under state law to the same extent as private individuals. State law thus governs ... the creation of liability." Reo v. U.S. Postal Serv., 98 F.3d 73, 76 (3d Cir.

1996). Because the tortious act at issue in the instant case occurred in Delaware, issues of substantive law must be determined pursuant to Delaware law.

Delaware's No-Fault statute provides, in pertinent part:

Insurers providing [PIP] benefits ... shall be subrogated to the rights ... of the person for whom benefits are provided, to the extent of the benefits so provided.

(1) Such subrogated rights shall be limited to the maximum amounts of the tortfeasor's liability insurance coverage available for the injured party, after the injured party's claim has been settled or otherwise resolved, except that the insurer providing benefits shall be indemnified by any workers' compensation insurer obligated to make such payments to the injured party.

...

(6) Unless specifically excepted by this subsection, this subsection shall also apply to self-insurers.

21 Del. C. § 2118(g). Delaware's No-Fault statute classifies private parties as either commercial insurers, self-insurers, or insured individuals.

Both parties agree that the United States is not a commercial insurer. The United States contends that because it provides its employees with financial security at least equivalent to that required by the state no-fault statute, it is an insured individual and thus immune from this subrogation action under 2118(g) (3). Young v. United States, 71 F.3d 1238, 1245 (6th Cir. 1995). Relying on Waters v. United States, Plaintiff contends that the United States is self-insured. 787 A.2d 71, 73 (Del. 2001).

After reviewing the relevant law and the parties'

contentions, the Court concludes that the United States is best analogized to a self-insured party under Delaware law. Because the United States does not have an insurance policy that satisfies the requirements of Section 2118(c),¹ it cannot be considered insured. In short, the United States, the “tortfeasor” here, is not insured by a third-party insurer, and thus the immunity from subrogation actions provided to insured tortfeasors by Delaware law is not available to the United States because there is no third-party insurer for State Farm to subrogate against. As the Delaware Supreme Court explained in Waters:

While this subsection [2118(g)] clearly prohibits a PIP insurer from seeking recovery against an individual tortfeasor who has a third-party insurer, it is silent with regard to tortfeasors who have no third-party insurer as defined in the statute. The limitation set by section 2118(g)(1) thus does not apply to self-insured tortfeasors [or uninsured tortfeasors]. Rather, to the extent that section 2118(g)(1) is silent, the applicable rule is the general right to subrogate provided at common law and incorporated into the unambiguous language of section 2118(g).

787 A.2d at 73. Thus, a tortfeasor who is not insured by a third party insurance carrier is either uninsured or self-insured, and

¹Section 2118(c) provides:

Only insurance policies validly issued by companies authorized to write in this State all the kinds of insurance embodied in the required coverages shall satisfy the requirements of this section.

21 Del. C. 2118(c).

in either case, the no-fault carrier may subrogate directly against the tortfeasor. Id.

In Waters, the Delaware Supreme Court was asked, via certified question by this Court, to determine whether a PIP insurer that paid no-fault benefits to an insured, who was hurt by a vehicle driven by a United States employee, could subrogate against the United States. Answering in the affirmative, the Delaware Supreme Court stated:

[T]he United States can be considered the equivalent of a self-insured entity. While the United States is not technically 'self-insured' under the requirements of 21 Del. C. § 2904, the United States is a financially responsible entity that provides its employees with financial security at least equivalent to the insurance contemplated by state law pursuant to the Federal Employees Compensation Act.

787 A.2d at 73 (internal citations omitted).

Because the facts at issue in Waters are analogous to those at issue here, the Court finds the Delaware Supreme Court's reasoning instructive and persuasive. Accordingly, the Court concludes that under the FTCA's "like circumstances" test, the United States is best considered self-insured under Delaware law. Because subrogation actions are permitted against self-insured parties under Delaware law, the United States is potentially liable under the FTCA. Therefore, the Court has subject matter jurisdiction over the issues presented in this case and accordingly Defendant's Motion to Dismiss will be denied.

CONCLUSION

For the reasons discussed, Defendant's Motion to Dismiss (D.I. 12) will be denied, and Defendant will be ordered to file a response to Plaintiff's Motion for Summary Judgment (D.I. 18) within 10 days of the date of this Memorandum Opinion; otherwise, the Court will grant the Motion.

An appropriate order will be entered.

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ORDER

At Wilmington this 22nd day of July 2003, for the reasons
set forth in the Memorandum Opinion issued this date;

IT IS HEREBY ORDERED that:

- (1) Defendant's Motion to Dismiss (D.I. 12) is **DENIED**;
- (2) Defendant will file a response to Plaintiff's
Motion for Summary Judgment (D.I. 18) within **10**
DAYS of the date of this Memorandum Opinion;
otherwise, the Court will grant the Motion.

JOSEPH J. FARNAN, JR.
UNITED STATES DISTRICT JUDGE