NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NUMBER 2006 CA 0920

ALLIED SYSTEMS LIMITED (L.P.) A/K/A ALLIED AUTOMOTIVE GROUP

VERSUS

STATE OF LOUISIANA, DEPARTMENT OF LABOR, OFFICE OF WORKERS' COMPENSATION ADMINISTRATION, SECOND INJURY FUND

Judgment Rendered: March 23, 2007

Appealed from the
Nineteenth Judicial District Court
In and for the Parish of East Baton Rouge, Louisiana
Docket Number 524,846

Honorable Leon A. Cannizzaro, Jr., Judge Presiding

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BEFORE: CARTER, C.J. WHIPPLE AND McDONALD, JJ.

McDonald, J. dissents and will assign reasons.

WHIPPLE, J.

This is an appeal from a judgment of the Nineteenth Judicial District Court in East Baton Rouge Parish. Plaintiff, Allied Systems Limited (L.P.) a/k/a Allied Automotive Group ("Allied"), sought review in the district court of a ruling by defendant, the State of Louisiana, Department of Labor, Office of Workers' Compensation Administration, Second Injury Fund ("the Second Injury Fund"), denying Allied direct reimbursement for workers' compensation benefits paid to Allied's employee, Dary Brouillette.

At the time of Brouillette's injury, Allied was insured by Lumbermen's Mutual Casualty Company ("Lumbermen's"). On August 13, 2004, Lumbermen's and Allied entered into an "Acknowledgment and Assignment," through which Lumbermen's purported to assign to Allied all of its rights and remedies against the Second Injury Fund relating to the claim of Brouillette, up to the policy deductible of $650,000.00.[1]

Pursuant to this assignment, Allied requested that the Second Injury Fund reimburse Allied directly, rather than Lumbermen's, for payments made on behalf of Brouillette. However, the Second Injury Board determined that because Allied was not a self-insured employer, Allied was not entitled to reimbursement from the Second Injury Fund and, thus, denied Allied's request for direct reimbursement for benefits paid on behalf of Brouillette.

Allied then appealed to the district court pursuant to LSA-R.S. 23:1378(E). The district court rendered judgment in favor of the Second

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[1]According to its petition, Allied was concerned that reimbursements paid to Lumbermen's, which Allied contended would normally then be reimbursed to Allied, were in jeopardy of being lost due to the fact that Lumbermen's was in "forced runoff monitored by the Illinois Insurance Commissioner." Allied further contended in its petition that in the event of Lumbermen's bankruptcy, Allied's "rightful recovery" of funds it paid to and on behalf of its injured employee would be lost in the pooling of Lumbermen's assets to its creditors.

Injury Fund, denying Allied's petition for appeal. As set forth in its written reasons for judgment, the district court concluded that, because Allied was not a property and casualty insurer, individual self-insurer or a group self-insurance fund and, thus, was not required to make annual payments to the Second Injury Fund, the clear wording of LSA-R.S. 23:1377(C)(3) mandated that Allied was ineligible for reimbursement from the Second Injury Fund.

From the judgment denying its petition for appeal, Allied appeals to this court, contending that the district court made certain manifestly erroneous factual findings. Allied further contends that the district court erred in holding that the clear and unambiguous language of LSA-R.S. 23:1377(C)(3) must be applied as written with no reference as to legislative intent and in concluding that the assignment between Allied and Lumbermen's was prohibited by LSA-R.S. 23:1377(C)(3).

DISCUSSION

The Louisiana Legislature enacted LSA-R.S. 23:1371-1378 to establish the Second Injury Fund. The Fund was created to encourage the employment of physically handicapped employees who have a permanent, partial disability. LSA-R.S. 23:1371(A); Louisiana United Businesses Ass'n v. State of Louisiana Workers' Compensation Second Injury Board, 2003-2503 (La. App. 1st Cir. 2/4/05), 906 So. 2d 441, 444. If an employer hires an employee with a preexisting disability, and this employee becomes injured while in the course and scope of his latest employment, though a property or casualty insurer, self-insured employer or group self-insurance fund must pay compensation benefits to the employee, it can then apply for reimbursement from the Second Injury Fund for those benefits paid to this employee. LSA-R.S. 23:1378; Employers National Insurance Company v.

Second Injury Board, 96-1585 (La. App. 1st Cir. 5/9/97), 693 So. 2d 1274, 1275.

As a method of funding the Second Injury Fund, every property and casualty insurer, self-insured employer, and group-self insurance fund, authorized to transact business in Louisiana, makes an annual payment to this fund. LSA-R.S. 23:1377(B)(2). This fund pays the Louisiana Workers' Compensation Second Injury Board's expenses and also makes reimbursement for compensable claims. LSA-R.S. 23:1377(A); Employers National Insurance Company, 693 So. 2d at 1275.

With regard to employers and insurers entitled to such reimbursement from the Second Injury Fund, LSA-R.S. 23:1377(C)(3) provides as follows:

> Any entity that is required by law to make an annual payment or payments into the fund and has not done so shall not be eligible for reimbursement from the fund. In addition, except as provided in R.S. 23:1378(A)(7) [relating to the Louisiana Insurance Guaranty Association], **any entity that is not required by law to make such payments into the fund shall not be eligible for reimbursement from the fund.** (Emphasis added).

On appeal, Allied contends that the district court clearly erred in its findings when it stated that Lumbermen's was responsible for paying Brouillette's workers' compensation benefits and that Allied had reimbursed Lumbermen's the amount of the assessment that was paid by Lumbermen's to the Second Injury Fund because Allied was concerned about the financial condition of Lumbermen's. Rather, Allied contends that because the Lumbermen's policy provided for a $650,000.00 deductible, Allied, and not Lumbermen's, had always been responsible for paying Brouillette's benefits, which had not exceeded the deductible.[2] Additionally, Allied contends the

[2]We note that while Allied contended in the district court below that it had made all payments on Brouillette's claim because the policy deductible had not been met, the Second Injury Fund contended that Lumbermen's had paid the benefits owed.

district court clearly erred in suggesting that it reimbursed Lumbermen's for the assessment Lumbermen's paid to the Second Injury Fund because Allied was concerned about the financial condition of Lumbermen's. Allied contends on appeal that such payments were made because the policy provided by Lumbermen's to Allied required Allied to reimburse the assessment, not because of Allied's concern about the financial condition of Lumbermen's.

However, we note that the issues of whether Allied actually paid Brouillette's benefits as well as the reason that Allied reimbursed the assessment paid by Lumbermen's to the Second Injury Fund are wholly irrelevant herein.[3] It is clear from the record, and Allied has so acknowledged, that it is not a self-insured employer and does not pay an annual assessment to the Second Injury Fund. Accordingly, we find no error in the district court's conclusion that pursuant to the clear language of LSA-R.S. 23:1377(C)(3), Allied is not entitled to reimbursement of benefits from the Second Injury Fund. See LSA-C.C. art. 9 ("When a law is clear and unambiguous and its application does not lead to absurd consequences, the law shall be applied as written and no further interpretation may be made in search of the intent of the legislature.")

Moreover, we likewise find no error in the district court's conclusion that the parties could not circumvent the clear language of LSA-R.S. 23:1377(C)(3) by contract. While Allied is correct in asserting that pursuant to LSA-C.C. art. 2642, rights are generally assignable, in the instant case,

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[3]We find from our review of the record that there is nothing to support the argument that the assessments to Lumbermen's were paid into the Second Injury Fund by Allied. In fact, Allied has not so contended. Rather, Allied has contended only that it reimbursed Lumbermen's the amount of the assessments paid by Lumbermen's. We note, however, and Allied has acknowledged, that this arrangement was based on Allied's contract with Lumbermen's rather than any legal requirement that Allied pay such sums.

LSA-R.S. 23:1377(C)(3) specifically provides that only property and casualty insurers, self-insured employers and group self-insurance funds required by law to pay an annual assessment to the Second Injury Fund are eligible to receive reimbursement from the Fund. See LSA-C.C. art. 2642, 1993 Official Revision Comments (a) & (c). Thus, under the established facts herein, Allied simply was not entitled to reimbursement from the Second Injury Fund given the clear dictates of LSA-R.S. 23:1377(C)(3).

CONCLUSION

For the above and foregoing reasons and in accordance with Uniform Rules—Courts of Appeal, Rule 2-16.1(B), the December 14, 2005 judgment of the district court, denying the appeal of Allied Systems Limited, is affirmed. Costs of this appeal are assessed against Allied Systems Limited.

AFFIRMED.