

SUPERIOR COURT  
OF THE  
STATE OF DELAWARE

E. SCOTT BRADLEY  
JUDGE

1 The Circle, Suite 2  
GEORGETOWN, DE 19947

September 25, 2012

John S. Spadaro, Esquire  
John Sheehan Spadaro, LLC  
724 Yorklyn Road, Suite 375  
Hockessin, DE 19707

Colin M. Shalk, Esquire  
Casarino, Christman, Shalk, Ransom  
& Doss, P.A.  
405 North King Street, Suite 300  
P.O. Box 1276  
Wilmington, DE 19899

Re: ***Melvin Davis v. State Farm Mutual Automobile Insurance Company***  
C.A. No. S10C-09-005 ESB

Submitted: May 25, 2012

Dear Counsel:

This is my decision on the cross-motions for summary judgment in this case that raises the question of whether the PIP statute<sup>1</sup> requires an insurer to honor an insured's request to reserve personal injury protection coverage benefits for lost earnings instead of medical payments to health care providers. The plaintiff/insured is Melvin Davis. The defendant/insurer is State Farm Mutual Automobile Insurance Company. Davis was a passenger in a car that was involved in a serious single-vehicle accident. He was severely injured and spent six weeks in the Christiana Hospital. The owner of the car had an insurance policy with State Farm that had \$15,000 in PIP benefits. Christiana Care Health Services, Inc. obtained an assignment of insurance benefits from Davis's

---

<sup>1</sup> 21 *Del. C.* §2118.

mother while he was hospitalized in a coma. State Farm paid the entire \$15,000 in PIP benefits to Christiana Care and the Delaware Neurological Group before Davis could make a claim for PIP benefits. When Davis did ask State Farm to send him an application for benefits, State Farm refused to do so, telling Davis that it had already exhausted his PIP benefits. Davis then filed this lawsuit against State Farm, arguing that State Farm violated the PIP statute by refusing to honor his request. State Farm argues that the PIP statute does not prohibit it from paying claims in the order in which they are filed. State Farm pays claims on this basis because it is the easiest way for it to process them. I have concluded (1) that State Farm improperly paid Christiana Care and the Delaware Neurological Group because the assignment of insurance benefits that it relied upon to make those payments was not valid, and (2) that the PIP statute does allow Davis to reserve his PIP benefits that have not been previously paid for his lost earnings because doing so furthers the underlying purpose of the PIP statute, which is to compensate persons injured in motor vehicle accidents regardless of fault.

#### Statement of Facts

Davis was a passenger in a car being driven by James Sheppard that was involved in a serious single-vehicle accident on September 15, 2009. He was seriously injured and spent six weeks in the Christiana Hospital. Davis now suffers neurological problems and has been homeless at times. His medical expenses from Christiana Care alone exceed \$135,000. Sheppard did not own the car that was involved in the accident. Donna Wilson owned the car and had an insurance policy with State Farm that had \$15,000 in PIP benefits. Davis's mother executed a revocable assignment of insurance benefits in favor of Christiana Care on September 17, 2009. Davis was in a coma at the time. He was not discharged from the hospital until October 30, 2009. State Farm issued a reservation of

rights letter to Davis on December 9, 2009. State Farm decided on December 24, 2009 to pay PIP benefits. It mailed a letter to Davis on December 29, 2009, stating that liability was denied but that it would pay PIP benefits. Somewhere along the way Davis retained David A. Boswell, Esquire to represent him. Boswell's paralegal, Karen Ranck, contacted State Farm on January 5, 2010 to determine the status of the insurance coverage. She was told that the insurance coverage had been denied in all respects. State Farm paid \$15,000 in PIP benefits to Christiana Care and the Delaware Neurological Group on January 6, 2010. Boswell sent a letter to State Farm on January 6, 2010, requesting a PIP application. State Farm sent a letter to Davis on January 8, 2010, stating that his PIP benefits had been exhausted through payments to his health care providers. State Farm received Boswell's letter asking for a PIP application on January 11, 2010. Boswell's paralegal called State Farm on February 1, 2010 and asked it to reserve Davis's PIP benefits for his lost earnings. She was told that State Farm had changed its mind and paid the hospital's bills. Boswell faxed a request to State Farm on February 5, 2010, asking for a PIP application and reserving Davis's PIP benefits for his lost earnings. State Farm refused to do this.

#### Standard of Review

This Court will grant summary judgment only when no material issues of fact exist, and the moving party bears the burden of establishing the non-existence of material issues of fact.<sup>2</sup> Once the moving party meets its burden, the burden shifts to the non-moving party to establish the existence of material issues of fact.<sup>3</sup> The Court views the evidence in a light most favorable to the nonmoving

---

<sup>2</sup> *Moore v. Sizemore*, 405 A.2d 679, 680 (Del. 1979).

<sup>3</sup> *Id.* at 681.

party.<sup>4</sup> Where the moving party produces an affidavit or other evidence sufficient under *Superior Court Civil Rule 56* in support of its motion and the burden shifts, the non-moving party may not rest on its own pleadings, but must provide evidence showing a genuine issue of material fact for trial.<sup>5</sup> If, after discovery, the non-moving party cannot make a sufficient showing of the existence of an essential element of the case, then summary judgment must be granted.<sup>6</sup> If, however, material issues of fact exist or if the Court determines that it does not have sufficient facts to enable it to apply the law to the facts before it, then summary judgment is not appropriate.<sup>7</sup>

#### The Parties' Arguments

Davis argues that State Farm has to manage his PIP benefits in such a manner that is most beneficial to him. He believes that since he is unable to provide for even his most basic needs that it would be more beneficial to him to reserve his PIP benefits for his lost earnings instead of for payments to his health care providers. Davis's argument is based on a series of cases where there were multiple sources of insurance coverage, such as PIP benefits and workers' compensation.<sup>8</sup> In these cases, the courts held that the PIP benefits were to be paid only after all of the insured's other

---

<sup>4</sup> *Id.* at 680.

<sup>5</sup> *Super. Ct. Civ. R. 56(e); Celotex Corp. v. Catrett*, 477 U.S. 317, 322-23 (1986).

<sup>6</sup> *Burkhart v. Davies*, 602 A.2d 56, 59 (Del. 1991), *cert. den.*, 112 S.Ct. 1946 (1992); *Celotex Corp.*, 477 U.S. 317 (1986).

<sup>7</sup> *Ebersole v. Lowengrub*, 180 A.2d 467, 470 (Del. 1962).

<sup>8</sup> *Johnson v. Firemen's Fund Ins. Co.*, Del. Super., C.A. No: 82C-OC-63, Poppiti, J. (August 8, 1983). *Lane v. Home Ins., Co.*, 1988 WL 40013 (Del. Super. Ct.) *Cicchini v. State*, 640 A.2d 650 (Del. Super. Ct. 1993), *aff'd* 642 A.2d 837 (Del.1994). *Community Sys., Inc. V. Allen*, 1999 WL 1568331 (Del. Super. Ct.).

insurance benefits had been exhausted in order to maximize the insured's PIP benefits.<sup>9</sup> Davis's argument, of course, goes further than the holdings in these cases. State Farm argues that the PIP statute makes no priority distinction between lost earnings and medical expenses, allowing it to pay claims in the order in which it receives them regardless of Davis's wishes.<sup>10</sup> Since State Farm paid out all of Davis's PIP benefits to two of his health care providers, it argues that he has no grounds to complain, reasoning that his PIP benefits have been exhausted for his benefit. State Farm pays PIP claims in the order in which it receives them. Obviously, the issues in this case are made more complicated by the fact that State Farm has already paid out all of Davis's PIP benefits before he could even make a claim.

#### The PIP Statute

21 *Del.C.* § 2118(a)(2) (a) provides that no owner of a motor vehicle required to be registered in Delaware shall operate the motor vehicle unless the owner has insurance on the motor vehicle providing minimum insurance coverage for compensation to injured persons for reasonable and necessary expenses incurred within two years from the date of the accident for medical expenses and lost earnings. 21 *Del.C.* § 2118(B) provides that when an insurer is notified in writing by the claimant that the claimant desires to file an initial claim for benefits pursuant to § 2118(a)(2), the insurer shall, no later than 10 days following the insurer's receipt of the request, provide that claimant with a form for filing such a claim. It also provides that the insurance company shall pay

---

<sup>9</sup> NEED CITE

<sup>10</sup> Notwithstanding State Farm's position, the evidence in the record indicates that a number of insurance companies doing business in Delaware will, at the request of the insured, reserve PIP benefits for lost earnings and inform the insured's health care providers that their claims can not be paid because the insured's PIP benefits have been reserved for the insured's lost earnings.

the claim within 30 days of receipt of the claim or provide the claimant with an explanation of why the claim was not paid. The purpose of § 2118(B) is to ensure reasonably prompt processing and payment of sums owed by insurers to their policy holders and others persons covered by their policies pursuant to § 2118, and to prevent the financial hardship and damage to personal credit ratings that can result from the unjustifiable delays of such payments. Prompt payment is accomplished by imposing financial penalties on insurers who do not pay within the statutorily required period of time.

#### Christiana Care and the Delaware Neurological Group

The Supreme Court in *Sammons v. Hartford Underwriters Insurance Co.* affirmed, without a decision, a Superior Court judge's ruling that a health care provider can be a "claimant" under §2118(B).<sup>11</sup> This makes it possible for the insured and any number of the insured's health care providers to submit claims to an insurance company, making it necessary for someone to decide which claims are to be paid when there are not enough PIP benefits to pay all of the claims. This problem is exacerbated by the statutory requirement to pay the claims within 30 days or explain why they have not been paid. State Farm deals with this problem by paying the claims in the order in which it receives them until the insured's PIP benefits are exhausted. *Sammons* does not address the issue of how and when a health care provider becomes a "claimant." However, this can be determined by examining the Superior Court's rationale for its decision in *Sammons*. The decision in *Sammons* was heavily influenced by the nature of our third-party health care payment system, which involves health care providers submitting their bills directly to the insured's insurance carrier

---

<sup>11</sup> *Sammons v. Hartford Underwriters Insurance Co.*

instead of to the insured.<sup>12</sup> A critical aspect of this is the execution by the insured of an assignment of insurance benefits in favor of a health care provider, which authorizes it to seek payment directly from the insured's insurance company. Given this, I conclude that a health care provider becomes a "claimant" only after obtaining a valid assignment of insurance benefits from the insured and providing health care to the insured.

That is basically what happened in this case. Davis's mother executed an assignment of insurance benefits in favor of Christiana Care. The assignment covers Christiana Care and physicians providing hospital-based services. Since there is no assignment of insurance benefits for the Delaware Neurological Group in the record, I assume that State Farm is relying on the assignment that Davis's mother executed in favor of Christiana Care to cover the Delaware Neurological Group. Christiana Care and the Delaware Neurological Group then requested State Farm to pay their bills, which State Farm did up to \$15,000. Thus, State Farm had paid out all of Davis's PIP benefits before he could even make a claim.

This first step in resolving this case is to determine whether the assignment of insurance benefits is valid. In order for an assignment of benefits under an insurance policy to be valid, the assignor must have such contractual capacity as is required for the maker of an assignment generally.<sup>13</sup> I assume that Christiana Care had Davis's mother execute the assignment of insurance benefits because he was in a coma and was unable to do so. Davis is an adult. There is nothing in the record to indicate that Davis's mother had the authority to assign away his insurance benefits. Thus, I have concluded that the assignment of insurance benefits is invalid and that State Farm

---

<sup>12</sup> CITE

<sup>13</sup> NEED FOOTNOTE

therefore improperly paid the \$15,000 to Christiana Care and the Delaware Neurological Group. Now there are no health care providers that were properly paid before Davis asked State Farm to reserve his PIP benefits for his lost earnings. This makes the issues in this case less complicated. There are now \$15,000 in PIP benefits available for Davis and his health care providers. The question is now whether State Farm is obligated to reserve Davis's PIP benefits for his lost earnings at the expense of his health care providers and in a manner that will cause state Farm some additional administrative expense.

#### Statutory Interpretation

The PIP statute sets forth (1) the minimum insurance coverage requirements, (2) a procedure for filing a claim, and (3) penalties for not paying claims in a timely manner. However, the PIP statute does not expressly address the question that is before me. Thus, in order to answer this question I have to consider the applicable rules of statutory construction. There are two principal tenets of statutory interpretation.<sup>14</sup> The first is that where the language of a statute is clear, a court's function is only to apply that clear command.<sup>15</sup> The second is that where the language chosen leaves it unclear whether it was the legislature's intent to apply the statute in circumstances of the kind presented or leaves it unclear as to how that language should be applied, then a court should place such construction on the words as will be most consistent with the legislative purpose in enacting the statute.<sup>16</sup> This case falls in the second category. The language of the PIP statute is clear and it does set forth a procedure for filing a claim. However, it does not explicitly authorize or prohibit

---

<sup>14</sup> NEED FOOTNOTE

<sup>15</sup> NEED FOOTNOTE

<sup>16</sup> NEED FOOTNOTE



a claimant such as Davis from reserving his PIP benefits for his lost earnings and it does not explicitly authorize or prohibit State Farm from paying claims in the order that it receives them. Therefore, in order to resolve the question before me I have to search for the legislature's underlying purpose in enacting the PIP statute.

The underlying purpose of the PIP statute is to protect and compensate all persons injured in automobile accidents regardless of fault.<sup>17</sup> Moreover, this section is entitled to liberal construction in order to achieve its purpose.<sup>18</sup> The purpose of §2118B is to ensure the reasonably prompt processing and payment of sums owed by insurers to their policy holders and other persons covered by their policies pursuant to §2118 and to prevent the financial hardship and damage to personal credit ratings that result from the unjustifiable delays of such payments. Obviously, this applies to lost wages as well as medical expenses since a person can fall behind on bills other than medical expenses if they are unable to work and earn a living. Thus, the underlying purpose of the PIP statute focuses on the need to compensate the injured person in a timely manner. There is no focus whatsoever on the administrative convenience of insurance companies and there is no focus whatsoever on making sure that health care providers get paid. The only concern regarding health care providers is making sure that they get paid promptly so that the injured person's credit ratings will not be damaged.

There are two choices for me here, making it a question of which choice best furthers the underlying purpose of the PIP statute. Do I allow the insurer to decide which bills get paid, or do I allow the injured person to make that decision. The first choice reduces the insurer's administrative

---

<sup>17</sup> *Grey v. Allstate*, 668 A.2 778, *Wisnewski v. State Farm*, (Super. Ct. Feb. 14, 2005).

<sup>18</sup> *Cicchini v. State*, 640 A.2d 650.

costs and frustrates the injured person's wishes. The second choice furthers the injured person's wishes and increases the insurer's administrative costs. Given that the purpose of the PIP statute is to help injured persons and not to see that health care providers get paid or that the administrative costs of insurance companies are reduced, I hold that the legislature would want the PIP statute to be applied in such a manner that allows the injured person to reserve his or her PIP benefits that have otherwise not been properly paid for his or her lost earnings. This certainly is to Davis's benefit. He has health care bills and lost earnings that far exceed the \$15,000 in PIP benefits available to him. Given his dire circumstances, Davis wants to use his PIP benefits for his lost earnings. It is completely understandable that he would rather use *his* limited PIP benefits for *his* most basic needs, instead of seeing that his health care providers get paid and that State Farm's administrative costs are reduced. Obviously, Davis is not worried about his personal credit rating. He is worried about food and shelter. As the primary beneficiary under the PIP statute, it is only appropriate that Davis be the one to decide how to best maximize his PIP benefits. Davis may reserve the \$15,000 in PIP benefits for his lost earnings.

#### The Other Claims

\_\_\_\_\_ State Farm has sought summary judgment on all of Davis's claims. Davis alleged in his complaint that State Farm (1) breached the insurance contract by paying his \$15,000 in PIP benefits to Christiana Care and the Delaware Neurology Group rather than reserving them for his lost earnings, (2) breached its covenant of good faith and fair dealing, (3) intentionally caused him emotional distress, and (4) negligently caused him emotional distress. I have ruled in favor of Davis and against State Farm on his first claim. I have denied State Farm's motion for summary judgment on Davis's second claim because its defense is based upon the same rationale as its defense to his

first claim. I have denied State Farm's motion for summary judgment on Davis's third claim because whether or not State Farm's conduct was extreme and outrageous is a matter for a jury to decide.<sup>19</sup> I have granted State Farm's motion for summary judgment on Davis's fourth claim because there is no evidence in the record that Davis suffered physical injury as a result of State Farm's actions.<sup>20</sup>

### Conclusion

Melvin Davis's motion for partial summary judgment is granted. State Farm Mutual Automobile Insurance Company's motion for summary judgment is granted in part and denied in part.

IT IS SO ORDERED.

/s/ E. Scott Bradley  
E. Scott Bradley

---

<sup>19</sup> NEED CITE

<sup>20</sup> *Smith v. Peninsula Adjusting Co., Inc.*, 2011 WL 2791252, at \*4 (Del. Supr.).