IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR KENT COUNTY

DANIEL R. SOUTH,	:	
	:	C.A. No. K11C-11-018 WLW
Plaintiff,	:	
	:	
v.	:	
	:	
STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY, a foreign corp.,	:	
	:	
Defendant.	:	

Submitted: July 6, 2012
Decided: September 28, 2012

ORDER

Upon Plaintiff's Motion for Partial Summary Judgment. *Denied.*

Scott E. Chambers, Esquire of Schmittinger & Rodriguez, Dover, Delaware; attorney for the Plaintiff.

Patrick G. Rock, Esquire of Heckler & Frabizzio, Wilmington, Delaware; attorney for the Defendant.

WITHAM, R.J.

The issue before the Court is whether Plaintiff, as a matter of law, is entitled to personal injury protection (PIP) benefits for injuries he claims he sustained when he slipped and fell on a patch of ice as he was exiting the insured vehicle.

FACTUAL AND PROCEDURAL HISTORY

The underlying facts of this case are in dispute. Plaintiff Daniel R. South (hereinafter "Plaintiff") seeks to recover damages for injuries he sustained as a result of a slip and fall in the parking lot of Tractor Supply in Middletown, Delaware on Feb. 11, 2010. On the day in question, Plaintiff was driving a 2003 Chevy Silverado owned by Donna L. Wolf, the mother of Plaintiff's girlfriend. Plaintiff alleges that he slipped and fell on a patch of ice as he was exiting the vehicle, and has sustained serious injuries as a result of this fall. As a result of his injuries, Plaintiff received medical treatment and lumbar surgery, and consequently, incurred medical expenses totaling $58,009.56.

At the time of this accident, the vehicle was insured by the Defendant, State Farm Mutual Automobile Insurance Co. (hereinafter "Defendant"). The coverage included personal injury protection (hereinafter "PIP") benefits, as required by 21 *Del. C.* § 2118, for up to $100,000 per person for each accident. Plaintiff applied for PIP benefits under this policy. When Defendant denied him coverage on the basis that he was not occupying the covered vehicle at the time of his fall, Plaintiff sued the Defendant pursuant to 21 *Del. C.* § 2118, seeking reimbursement for his medical expenses and lost wages. On June 19, 2012, Plaintiff moved for partial summary judgment, asserting that he meets the definition of "occupant" and is thus eligible for

PIP benefits as a matter of law.

Standard of Review

Summary judgment should be granted only if the record shows that there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law.[1] The facts must be viewed in the light most favorable to the non-moving party.[2] Summary judgment may not be granted if the record indicates that a material fact is in dispute, or if it seems desirable to inquire more thoroughly into the facts in order to clarify the application of the law to the circumstances.[3] However, when the facts permit a reasonable person to draw but one inference, the question becomes one for decision as a matter of law.

DISCUSSION

Plaintiff contends that he is entitled to summary judgment because he meets the definition of an "occupant" found in 21 *Del. C.* § 2118(a)(2)(c), and, thus, qualifies for PIP benefits as a matter of law. Even if Plaintiff does qualify as an occupant for the purposes of Section 2118, Plaintiff's Motion for Partial Summary Judgment must be denied as material facts remain in dispute on the issues of (1) whether Plaintiff's injuries were proximately caused by the accident in question; and (2) whether his subsequent medical treatment was reasonable and necessary.

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[1] Super. Ct. Civ. R. 56(c).

[2] *Guy v. Judicial Nominating Comm'n*, 659 A.2d 777, 780 (Del. Super. Ct. 1995).

[3] *Ebersole v. Lowengrub*, 180 A.2d 467, 468-69 (Del. 1962).

Plaintiff contends that he is entitled to PIP benefits as a matter of law because he was exiting the insured vehicle at the time of his fall, and, thus, qualifies as an occupant under the "reasonable geographic perimeter" test articulated in *National Union Fire Insurance Company of Pittsburgh v. Fisher*.[4] Personal injury protection ("PIP") coverage is mandated for all vehicles registered and insured in Delaware.[5] PIP coverage extends to "each person occupying such motor vehicle and to any other person injured in an accident involving such motor vehicle, other than an occupant of another motor vehicle."[6] In *Selective Insurance Co. v. Lyons*, the Supreme Court articulated a bright line rule that "a person is an occupant of an insured vehicle if he or she is either (1) within a reasonable geographic perimeter of the vehicle or (2) engaged in a task related to the operation of the vehicle."[7] To qualify as an occupant under the first prong, the injured person must be "in, entering, exiting, touching, or within reach of the covered vehicle."[8]

The only evidence Plaintiff proffers in support of his motion is his own deposition testimony that he was exiting the insured vehicle at the time of his fall.

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[4]692 A.2d 1021 (Del. 1996).

[5]21 *Del. C.* § 2118(a). Section 2118(a)(2) provides for "compensation to injured persons for reasonable and necessary expenses incurred within 2 years from the date of the accident." Reimbursement for medical treatment and lost earnings is expressly authorized. *See* 21 *Del. C.* § 2118(a)(2)(a.)(1)-(2).

[6]21 Del. C. § 2118(a)(2)(c).

[7]*Selective Ins. Co. v. Lyons and Allstate,* 681 A.2d 1021, 1025 (Del. 1996).

[8]*Nat'l Union Fire Ins. Co. of Pittsburgh v. Fisher,* 692 A.2d 892, 897 (Del. 1997).

Defendant offers no evidence in its opposition motion controverting Plaintiff's testimony. Even if the Court accepts, as it must, that the uncontroverted facts as set forth under oath by Plaintiff are true,[9] the Court need not reach the issue of whether Plaintiff qualifies as an "occupant" of his vehicle for PIP benefits because he has failed to prove two additional elements required under 21 *Del. C.* § 2118; namely, (1) that his medical expenses are reasonable and necessary; and (2) that they are causally related to the injuries he sustained in the accident.[10]

When establishing his right to payment under section 2118, a plaintiff must prove that the expenses he incurred were causally related to the accident involving the insured vehicle[11], and that they were reasonable and necessary.[12] To do so, a plaintiff must produce expert testimony.[13] Upon a review of the record in a light most favorable to the Defendant, the Court finds that an entry of judgment for Plaintiff at this time would be premature. Summary judgment is not appropriate when the Court

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[9]*See Nat'l Fire Ins. Co. v. Eastern Shore Lab, Inc.,* 301 A.2d 526, 528 (Del. Super. 1973).

[10]*See* 21 *Del. C.* § 2118(a)(2)(a.); *see also Ramsey v. State Farm Mut. Ins. Co.,* 869 A.2d 327, at *1 (Del. March 10, 2005) (holding that the PIP statute "provides recovery for only 'reasonable and necessary' expenses); *Schulze v. State Farm Mut. Auto. Ins. Co.,* 2009 WL 3630837, at *1 (Del. Super. Aug. 17, 2009); *Flowers v. State Farm Mut. Aut. Ins. Co.,* 2001 WL1555332, at *2 (Del.Com.Pl.) (Plaintiff bears burden of proving that medical treatment was reasonable, necessary, and related to the accident in question).

[11]*See Flowers*, 2001 WL1555332, at *2.

[12]*Id.*

[13]*Dennis v. State Farm Mut. Auto Ins. Co.,* 2008 WL 4409436, at *2 (Del. Super. Feb. 13, 2008).

determines that it does not have sufficient facts in the record to enable it to apply the law to the facts before it.[14] Such is the case here. Plaintiff has not proffered expert testimony substantiating either the reasonableness of his expenses, or their casual nexus to the accident in question. Because Plaintiff failed to present sufficient evidence to support essential elements of his claim, the Court cannot conclude, as a matter of law, that he is entitled to recover PIP benefits from Defendant.

CONCLUSION

For the foregoing reasons, Plaintiff's Motion for Summary Judgment is **denied**. IT IS SO ORDERED.

/s/ William L. Witham, Jr.
Resident Judge

WLW/dmh

[14]*See Ebersole v. Lowengrub,* 180 A.2d 467, 470 (Del.1962). *See also Guy v. Judicial Nominating Comm'n,* 659 A.2d 777, 780 (Del. Super. 1995) (citation omitted)("summary judgment may not be granted ... if it seems desirable to inquire more thoroughly into the facts in order to clarify the application of law to the circumstances.").