

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR NEW CASTLE COUNTY

VICTOR ORIJA AND WANDA ORIJA)
) CIVIL ACTION NUMBER
 Plaintiffs)
 v.) 06C-01-343-JOH
)
JENNIFER E. VERSER)
)
 Defendant/Third-Party Plaintiff)
)
 v.)
)
UNIVERSAL INSURANCE COMPANY)
)
 Third-Party Defendant)

Submitted: December 28, 2007

Decided: April 1, 2008

*Upon Motion of Defendant Verser for Declaratory Judgment - **DENIED***
*Upon Motion of Plaintiffs to Admit Special Economic Damages - **GRANTED***
*Upon Motion of Third-Party Defendant to Dismiss or for Summary Judgment - **GRANTED***

MEMORANDUM OPINION

Appearances:

Francis J. Jones, Esquire, of Morris James LLP, Wilmington, Delaware, attorney for plaintiff

Thomas P. Leff, Esquire, of Casarino Christman & Shalk, Wilmington, Delaware, attorney for defendant

Daniel P. Bennett, Esquire, of Mintzer Sarowitz Zeris Ledva & Meyers, Wilmington, Delaware, attorney for third-party defendant

HERLIHY, Judge

Victor Orija is a North Carolina resident who owns a motor vehicle registered and insured under the laws of that state. Defendant Jennifer Verser is a Virginia resident. Her motor vehicle is registered there. On November 11, 2004 the Orija and Verser vehicles collided in Delaware. He¹ has sued Verser.

Unlike Delaware, North Carolina does not require motor vehicle owners to obtain insurance which provides certain minimum coverage. Delaware's no-fault law, however, requires persons from other states who operate vehicles here to have insurance that equals the minimums under Delaware law. Orija's policy provided for such extraterritorial coverage.

The issue presented arises from the confluence of two sources. The first source is the Delaware provision governing out-of-state drivers. The second source is that owners of motor vehicles registered in Delaware must carry insurance providing for certain no-fault Personal Injury Protection (PIP). Where there is litigation arising out of an auto accident involving a Delawarean covered by no-fault insurance, any PIP payments made within two years or up to the minimums, if paid in less than two years, cannot be admitted into evidence at trial.

This preclusion applies to persons who are considered "eligible" for coverage under Delaware's no-fault law. Orija argues he does not meet those eligibility requirements. He, therefore, seeks to introduce into evidence payments he has received which would

¹ His wife has sued for loss of consortium.

otherwise be precluded. Verser (1) opposes that move and (2) has asked for a declaratory judgment requiring Orija's insurer to pay him the equivalent of Delaware's minimum PIP payments.

There are two issues presented. One, does the provision mandating equivalent minimum coverage on out-of-state vehicles operated here which came from states with no minimums mean PIP equivalent payments are precluded from evidence at trial? Two, is Verser, a Virginia resident entitled to either invoke the preclusion clause or require Orija's insurer to make PIP-equivalent payments to him?

These issues are novel. This Court holds Verser, an out-of-state resident, lacks standing to enforce the preclusion provision or to compel Orija's insurer to make PIP-equivalent payments to him.

Procedural Posture

Verser has brought a third-party declaratory judgment action against Orija's insurer, Universal Insurance Company. She seeks a declaration that Universal is at least liable to pay Orija the minimum PIP payments required under Delaware's no-fault law. She has now filed a motion to have this Court issue that declaration. Universal, of course, opposes and has filed its own motion to dismiss or for summary judgment. Orija has filed a *motion in limine* to be able to introduce at trial any PIP-type payments made to him that might otherwise be inadmissible if his vehicle were registered and insured pursuant to Delaware law. Verser opposes that motion.

Factual Background

Delaware law requires that owners of motor vehicles registered in this state must have certain minimum coverage, namely \$15,000 for any one person and \$30,000 for all persons injured in any one accident.² For vehicles not registered in Delaware but which are operated in this state, the same statute provides:

No owner of a motor vehicle being operated in this State shall operate in this State, or authorize any other person to operate such vehicle in this State, unless the owner has insurance on such motor vehicle equal to the minimum insurance required by the state or jurisdiction where said vehicle is registered. If the state or jurisdiction of registration requires no minimum coverage, then such owner must have insurance on such motor vehicle equal to the minimum insurance coverage required for motor vehicles registered in this State.³

Orija is a North Carolina resident.⁴ His car is registered there and insured under the laws of North Carolina. That state does not have minimum PIP type requirements of any kind (or did not in 2004 when this accident took place). Orija had insurance through Universal. His policy had this provision in it for out-of-state situations:

OUT OF STATE COVERAGE

If an auto accident to which his policy applies occurs in any state or province other than the one in which your covered auto is principally garaged, we will interpret your policy for that accident as follows:

² 21 *Del. C.* § 2118(a)(2)b.

³ 21 *Del. C.* § 2118(b).

⁴ In one of his filings Orija seems to indicate he had lived in Delaware for a period of time that may have required him to re-register his car here. Neither of the parties raise that matter as a factual or legal issue, although Verser notes it. Therefore, the Court will not consider it.

If the state or province has:

1. A financial responsibility or similar law specifying limits of liability for bodily injury or property damage higher than the limit shown in the Declarations, your policy will provide the higher specified limit.
2. A compulsory insurance or similar law requiring a nonresident to maintain insurance whenever the nonresident uses a vehicle in that state or province, your policy will provide at least the required minimum amounts and types of coverage.⁵

Universal does not write insurance for Delaware motor vehicles, is not qualified to do so, and is not incorporated here.

On November 11, 2004 while driving on the Dupont Highway in Delaware, Verser's vehicle collided with Orija's. He has sued seeking damages for his injuries. Verser is a Virginia resident who was operating a vehicle registered in that Commonwealth.

Parties' Contentions

In her declaratory judgment action and in her opposition to Orija's *motion in limine*, Verser relies upon Delaware's no-fault law. The first part of her argument is the provision requiring out-of-state owners from states not having minimum coverage requirements to have insurance coverage equal to Delaware's minimums. Since North Carolina law has no minimums, Delaware's minimum coverage would then be triggered. The second part is that Orija's Universal policy provided coverage for the circumstances in which he now

⁵ Orija's Universal Insurance Policy.

finds himself, he operated his vehicle in a state which has minimum coverage requirements.

From these provisions, she next contends Universal must make PIP type payments to Orija.⁶ She further argues that Delaware's no-fault law precludes from being introduced into evidence at trial any PIP type payments up to the minimums of \$15,000 or \$30,000. Verser invokes that preclusion provision against Orija.

Orija counters by questioning Verser's standing to make him look to Universal based on his North Carolina residence and that his car is registered and insured there. He asserts he is not eligible for Delaware's minimum PIP benefits. This means, he contends, the preclusion provision does not apply. He points out that the out-of-state coverage provision in his policy is located in the liability section. This placement, he asserts, means it is inapplicable to no-fault coverage. Orija acknowledges this "location" argument is novel to Delaware jurisprudence.

Universal argues that Verser lacks standing to compel it to do anything. She is not a party to Orija's insurance contract nor is she a third-party beneficiary to it. Universal also joins in the policy "location" argument which Orija advances.

Applicable Standards

Even though Universal has moved to dismiss Verser's declaratory judgment action, the parties have submitted matters on the record that were not in the original complaint.

⁶ At oral argument on the parties' motions, Orija's counsel indicated Universal had denied some or all coverage.

Universal in the alternative has moved for summary judgment, and no party has opposed with proceeding on that basis.⁷ As to Verser's action and Universal's motion, there are no genuine issues of material fact. The issue then is whether Universal or Verser is entitled to judgment as a matter of law.⁸

Orija's *motion in limine* turns on questions of statutory and contract interpretation and involves no factual issues.

Discussion

The analysis of the issues presented starts with Delaware's no-fault law. Owners of motor vehicles registered in Delaware must have certain minimum insurance on their vehicles:

The minimum insurance coverage which will satisfy the requirements of subparagraph a. of this paragraph is a minimum limit for the total of all payments which must be made pursuant to that subparagraph of \$15,000 for any 1 person and \$30,000 for all persons injured in any 1 accident.⁹

Orija operated in Delaware a vehicle registered and insured under the law of the North Carolina. That state has no minimum requirements such as the above. But when operating a vehicle in Delaware, an out-of-state owner from such a state, that owner must meet this requirement:

⁷ Compare *Appriva Shareholder Litigation Co., LLC v. EV3, Inc.*, 937 A.2d 1275 (Del. 2007).

⁸ *Friendly Finance Corp. v. Bovee*, 702 A.2d 1225, 1227 (Del. 1997).

⁹ 21 Del. C. (a)(2)(b).

If the state or jurisdiction of registration requires no minimum coverage, then such owner must have insurance on such motor vehicle equal to the minimum insurance coverage required for motor vehicles registered in this State.¹⁰

Orija had insurance coverage through Universal and the applicable extraterritoriality policy language is:

OUT OF STATE COVERAGE

If an auto accident to which his policy applies occurs in any state or province other than the one in which your covered auto is principally garaged, we will interpret your policy for that accident as follows:

If the state or province has:

1. A financial responsibility or similar law specifying limits of liability for bodily injury or property damage higher than the limit shown in the Declarations, your policy will provide the higher specified limit.
2. A compulsory insurance or similar law requiring a nonresident to maintain whenever the nonresident uses a vehicle in that state or province, your policy will provide at least the required minimum amounts and types of coverage.¹¹

The next step of the analysis is to determine who is eligible for the minimum coverage Delaware mandates. There is a list in the no-fault statute.¹² The seminal case

¹⁰ 21 *Del. C.* § 2118(b).

¹¹ Orija's Universal Insurance Policy.

¹² 21 *Del. C.* § 2118(a)(2) c-e.

interpreting these statutory provisions is *Deel v. Rizak*.¹³ In that case, plaintiffs were Maryland residents operating a vehicle registered there. They were injured when their vehicle was hit in Delaware by a driver whose vehicle was registered and insured under Delaware's no-fault law.

The Delaware defendant sought to invoke the preclusion provision in the no-fault law which read then and now:

Any person eligible for benefits described in paragraph (2) or (3) of subsection (a) of this section, other than an insurer in an action brought pursuant to subsection (g) of this section, is precluded from pleading or introducing into evidence in an action for damages against a tortfeasor those damages for which compensation is available under paragraph (2) or (3) of subsection (a) of this section without regard to any elective reductions in such coverage and whether or not such benefits are actually recoverable.¹⁴

The linchpin phrase is “Any person eligible for benefits. . . .” The District Court considered just who such persons are:

1. All persons who are injured while “occupying” a motor vehicle which is registered and insured in Delaware (21 Del. C. § 2118(a)(2)c).
2. All persons who are the named insureds of a Delaware motor vehicle insurance policy or are members of the named insured's household and
 - (a) are injured while occupying any registered motor vehicle other than a Delaware insured vehicle; or
 - (b) are struck while a pedestrian by any vehicle other than a Delaware insured motor vehicle. (21 Del. C. § 2118(a)(2)d).

¹³ 474 F. Supp. 45 (D. Del. 1979).

¹⁴ 21 *Del. C.* § 2118(h). This subsection was (g) when interpreted in *Deel*.

3. All pedestrians who are struck in Delaware by a motor vehicle registered and insured in Delaware. (21 Del.C. § 2118(a)(2)e).¹⁵

Since the Maryland plaintiffs did not meet the benefits eligibility requirements noted, they were not in the class of eligible persons whose PIP payments would be precluded at trial.

The case of *Nationwide Ins. Co. v. Battaglia*,¹⁶ involved a plaintiff injured while a passenger in a vehicle registered and insured under Maryland law. The accident was in Delaware. Nationwide paid the plaintiff no-fault benefits up to Maryland's minimum requirements. The plaintiff, however, sued Nationwide, also authorized to issue insurance in Delaware, to get the additional PIP benefits between Maryland's lower minimum (\$2500) and the higher Delaware minimum (\$10,000 at that time). This Court agreed the plaintiff could get benefits up to the Delaware minimum, but the Supreme Court reversed. Without a direct reference to *Deel*, it held Delaware's minimums were not required of vehicles not registered here.¹⁷

Subsequent to these decisions, § 2118(b) was amended to add the insurance coverage provisions governing out-of-state vehicles which are at issue in this case.¹⁸

¹⁵ *Id.* at 46.

¹⁶ 410 A.2d 1017 (Del. 1980).

¹⁷ *Id.* at 1018.

¹⁸ 68 Del Laws c. 331. Eff. July 8, 2002.

Several months after this enactment, the Supreme Court decided *Read v. Hoffecker*.¹⁹ Read was a passenger in a vehicle registered and insured under the laws of Virginia. At trial, this Court precluded Read's evidence showing payments for medical expenses and lost earnings. In a clear reference to *Deel*, the Supreme Court adopted the eligibility reasoning from the District Court. First, it noted, the preclusion provision²⁰ refers to persons eligible under § 2118(a). Such persons' special damages would be precluded. But, when adopting *Deel's* reasoning the Supreme Court adopted *Deel's* list of those persons who are eligible for PIP benefits. Read, a Virginia resident was not eligible using the *Deel* interpretation.²¹ Since Read was not eligible, the preclusion provision was inapplicable,²² and the Supreme Court reversed this Court.

Though decided after § 2118(b) was amended, the issues arose, as they had to, under statutory provisions in effect at the time of the accident in *Read*. As a result, the effect, if any, of the 1992 amendment was not discussed. Though it noted that Read had been paid some benefits under her Virginia insurance,²³ there was no amplification or any extraterritoriality provision in the policy.

¹⁹ 616 A.2d 835 (Del. 1992).

²⁰ 21 *Del. C.* § 2118(g).

²¹ *Id.* at 837.

²² *Id.*

²³ *Id.* at 836.

In the case of *Redding of Ortega*,²⁴ the injured plaintiffs, the Reddings, drove another's car that was uninsured. They, too, had no insurance. They were injured in an accident with a vehicle driven by Ortega. The court reaffirmed its holding in *Read*.²⁵ The issue was whether, without insurance on the vehicle or their own insurance, the Reddings met the threshold "persons eligible to receive insurance benefits" criteria of the preclusion provision.

The court in *Redding* said that to determine that, two questions had to be answered: (1) was the injured plaintiff "eligible" for benefits for purposes of the preclusion provision, and (2) is the evidence to be admitted involve injuries for which compensation is available pursuant to § 2118(a)?²⁶ Addressing the first question, the court held that, as uninsureds, either covering the car or themselves, the plaintiffs were not eligible to receive benefits prescribed by the provisions in § 2118(a). Accordingly, the preclusion provision was inapplicable.

Again, however, the court in *Redding* was not asked to address a case of an out-of-state vehicle covered, as required by Delaware law, with insurance to the extent of Delaware's requirements. That is the issue here, but it is complicated by Verser's own status as a non-resident owner. Her argument is that since Orija must have this minimum

²⁴ 840 A.2d 1224 (Del. 2003).

²⁵ *Id.* at 1127.

²⁶ *Id.* at 1226-7.

coverage, and his policy provides it, he is now equivalent to an owner of a Delaware registered vehicle. That makes Orija “eligible for benefits,” she argues. Yet, Orija still does not meet the eligibility criteria of § 2118(a)(2)c-e. This Court in this case need not make its holding dependent on that, however.

The reason it need not is that while the issue is novel to Delaware it is not novel in some jurisdictions. Several states have provisions similar to that portion of (b) at issue here and several courts in other jurisdiction have wrestled with this issue. While not doing so consistently, some of the inconsistency is due to differences in statutory language. But in each of these cases, the plaintiffs seeking protection under their state’s coverage laws were residents of those states.

A brief examination of those decisions and several others is instructive.

In *Boone v. Stonewall Ins. Co.*,²⁷ the Pennsylvania Superior Court had before it plaintiffs, Pennsylvania residents, who were injured in an accident in Pennsylvania while passengers in a car registered and insured under Virginia law. The plaintiffs were seeking “first party” medical payments under Pennsylvania’s financial responsibility laws. Vehicles registered in Pennsylvania had to have insurance providing coverage for certain “first-party” medical benefits, in that case, \$10,000 for first party medical expenses.

²⁷ 554 A.2d 968 (Pa. Super. 1989).

Virginia law did not (then) require coverage for such benefits, nor did the policy covering the vehicle provide that coverage.

The *Boone* court held that since the vehicle in question was not one registered in Pennsylvania, the owner was not required to have the minimum coverage that would apply to vehicles registered in the Commonwealth. But there was a provision in Pennsylvania's law stating:

(b) Nonresident – The nonresident owner of a motor vehicle not registered in this Commonwealth may give proof of financial responsibility by filing with the department [of transportation] a written certificate or certificates of an insurance company authorized to transact business in the state in which the motor vehicle or motor vehicles described in the certificate are registered or, if the nonresident does not own a motor vehicle, then evidence satisfactory to the department that the person does not own a motor vehicle. The department shall accept the certificate upon condition that the insurance company complies with the following provision with respect to the policies so certified:

* * * *

(2) The insurance company shall agree in writing that the policies shall be deemed to conform with the laws of this Commonwealth relating to the terms of motor vehicle liability policies issued in this Commonwealth.²⁸

The Court held that these provisions required only that nonresident auto insurance provide liability coverage. The statutory language, the Court held, did not require first-party medical benefit (non-liability) coverage.²⁹

²⁸ *Id.* At 970 citing 75 Pa.C.S. § 1782(b).

²⁹ *Id.* at 970. Accord *Southern Farm Bureau Cas. Ins. Co. v. Craven*, 89 S.W. 3rd 369 (Ark. Ct. App. 2002).

Orija offers as support a subsequent Pennsylvania case for which *Boone* was an important precedent. There was a key difference. In *Jarrett v. Pennsylvania Nat'l Mut. Ins. Co.*,³⁰ the injured plaintiffs were again Pennsylvania residents. They were passengers in Jarrett's auto which, however, was registered and insured under North Carolina law. The court in *Jarrett* reconfirmed *Boone's* holding that non-Pennsylvania vehicles do not have to have the minimum first-party benefits coverage.

But, closer to this case, Jarrett, unlike Boone, had this provision in his policy:

OUT OF STATE COVERAGE

If an auto accident to which this policy applies occurs in any state or province other than the one in which your covered auto is principally garaged, we will interpret your policy for that accident as follows:

If the state or province has...

2. A compulsory insurance or similar law requiring a non-resident to maintain insurance whenever the non-resident uses a vehicle in that state or province your policy will provide at least the required minimum amounts and types of coverage.³¹

The court in *Jarrett* said this provision was triggered by virtue of Pennsylvania's law governing coverage which out-of-state vehicles must have. But, as in *Boone*, that

³⁰ 584 A.2d 327 (Pa. Super. 1990).

³¹ *Id.* at 329 quoting Jarrett's policy.

required coverage was for *liability only* and not for the first-party benefits which the plaintiffs were seeking.³²

The court in dicta, said that its liability-only holding was supported by the fact that the out-of-state clause in Jarrett's policy was in the liability portion of that policy.³³ Orija primarily relies upon this part of the *Jarrett* opinion since his out-of-state coverage provision is also in his liability coverage section of his polciy.

That reliance, however, is misplaced. Delaware's financial responsibility law differs substantively for Pennsylvania's. While quoted before it is helpful to repeat it:

If the state or jurisdiction of registration requires no minimum insurance coverage, then such owner must have insurance on such motor vehicle equal to the minimum insurance coverage required for motor vehicles registered in this State.³⁴

In interpreting a statute, the Court's role is to determine and give effect to the legislature's intent.³⁵ Where that intent is clearly expressed by unambiguous language in the statue, the language itself controls.³⁶ This Court finds that the pertinent portions of (b) are not ambiguous in requiring coverage equivalent to Delaware's minimums where the

³² *Id.* at 329.

³³ *Id.*

³⁴ 21 *Del. C.* § 2118(b).

³⁵ *Murphy v. Bd. of Pension Trustees*, 442 A.2d 950, 951 (Del. 1982).

³⁶ *Sandt v. Delaware Solid Waste Authority*, 640 A.2d 1030, 1032 (Del. 1995).

home state has no lower minimums. Legislative history affirms the intent of (b). Such reference can be helpful to a court.³⁷ In this instance, in addition to the clear statutory requirement the legislative synopsis says it all:

This Bill will require insurance for all motor vehicles operating in this State whether they are registered in this State or not.³⁸

No party here argues that the pertinent sentence in 2118(b) is ambiguous.

Orija's home state, North Carolina, has no minimum coverage requirements which, consequently, this Court holds triggers the second sentence of (b). And like the Pennsylvania case of *Jarrett*, Orija's policy has the extraterritoriality provision in it. Orija, relying upon *Jarrett*, argues that since that provision is located in the liability coverage section, it cannot be read to create a coverage requirement for more than liability.

There are several flaws with this argument. First, Pennsylvania's statute as *Boone* and *Jarrett* point out, *only* requires an out-of-state vehicle to have liability coverage because that is all Pennsylvania's out-of-state vehicle provision required. Delaware's requirements in (b) are much broader and, for states which do not have minimums, the requirement is to have equivalent first-party benefit medical and lost wages coverage identical to what a Delaware registered vehicle/owner must have.

³⁷ See *A & P Stores v. Hannigan*, 367 A.2d 641, 643 (Del. 1976).

³⁸ 68 Del. Laws c. 331.

The second flaw with Orija's argument is that Universal's policy for Orija by its own language does not limit out-of-state coverage to liability. Coverage is provided when the foreign state has:

OUT OF STATE COVERAGE

If an auto accident to which this policy applies occurs in any state or province other than the one in which **your covered auto** is principally garaged, we will interpret your policy for that accident as follows:

If the State or province has:

1. A financial responsibility or similar law specifying limits of liability or **bodily injury** or **property damage** higher than the limit shown in the Declarations, your policy will provide the higher specified limit.
2. A compulsory insurance or similar law requiring a nonresident to maintain insurance whenever the nonresident uses a vehicle in that state or province, your policy will provide at least the required minimum amounts and types of coverage.³⁹

While Orija argues that conflict-of-law principles mean this policy must be interpreted under North Carolina law,⁴⁰ he does not cite any North Carolina cases which held different contract interpretation principles apply than those used in Delaware.

Insurance contracts should be read to give effect to their plain meaning.⁴¹ Here, the insured, Orija and the insurer, Universal, agree over the interpretation of the extraterritoriality clause. Both argue that since it is in the liability section of the policy,

³⁹ Defendant's Exhibit B. (Emphasis in original).

⁴⁰ *Liggett Group, Inc. v. Affiliated FM Ins. Co.*, 788 A.2d 134 (Del. Super. 2001).

⁴¹ *Rhone-Poulenc Basic Chemicals Co. v. American Motorists Ins. Co.*, 616 A.2d 1192, 1995 (Del. 1992).

that is all Universal is required to cover. Verser, naturally, disagrees. Interpretation of insurance provisions, however, is a determination of law.⁴²

Universal and Orija's interpretation, as a starting point, contradicts the clear statutory mandate in the second sentence of 2118(b). That sentence does not limit the coverage for foreign (non-Delaware) motor vehicles to only liability coverage to be equal to that required for a Delaware registered vehicle. Those parties' interpretations, therefore, would put the extraterritoriality clause at odds with a very strong public policy of this state.⁴³ Further, their interpretation would make that sentence meaningless because it relates back to the specific items for which minimum coverage is mandatory.

In short, Delaware law requires Universal to provide Orija no-fault coverage in the same minimally required amount for policies covering Delaware registered vehicles.

The Court's interpretation is consistent with that given by the Ohio Court of Appeals in *Motorists Mut. Ins. Co. v. Howard*.⁴⁴ In that case, an Ohio resident was struck and injured in Ontario Province, Canada by a resident of that province. The Ohio resident's pertinent policy language stated:

⁴² *State Farm Mut. Ins. Co. v. Claredon Nat. Ins. Co.*, 604 A.2d 384, 387 (Del. 1992).

⁴³ See *Chrysler Corp. v. Merrill & Garagusso, Inc.*, 796 A.2d 648 (Del. 2002).

⁴⁴ 675 N.E.2d 51 (Ct. App. 1996).

OUT OF STATE COVERAGE

If an auto accident to which this policy applies occurs in any state or province other than the one in which your covered auto is principally garaged, we will interpret your policy for that accident as follows:

A. If the state or province has:

1. A financial responsibility or similar law specifying limits of liability for bodily injury or property damage higher than the limit shown in the Declarations, your policy will provide the higher specified limit.
2. A compulsory insurance or similar law requiring a nonresident to maintain insurance whenever the nonresident uses a vehicle in that state or province, your policy will provide at least the required minimum amounts and types of coverage.⁴⁵

This language appeared in the liability section of the Ohio resident's policy. The insurer argued, therefore, that all it had to provide was whatever liability coverage Ontario required. The Ohio Court disagreed. It held this language required the insurer to provide the coverage mandated under Ontario law. It saw no language in this extraterritoriality provision itself limiting coverage to only liability.

Verser is a Virginia resident. She operated a vehicle in Delaware which was registered and insured under that state's laws. Yet she, not Orija, seeks to force Universal to pay Orija minimum benefits required by his policy by virtue of the extraterritoriality provision in it and § 2118(b). She also seeks to exclude evidence of any such benefits paid.

⁴⁵ *Id.* at 54, quoting policy.

Unlike a Delaware vehicle owner, she has not paid a premium for Delaware's minimum coverage which is inextricably tied to the preclusion provision. The Court does not see her as a third-party beneficiary under these circumstances of Orija's policy's extraterritoriality provision is triggered Delaware's mandate for out-of-state drivers. That would be stretching legislative intent too far.

Orija was insured. His policy had the extraterritoriality provision needed to comply with Delaware's (and other states') laws. He met the requirements of 2118(b). That does not mean, however, that a non-resident properly insured (or even not insured at all) can take advantage of a statutory provision, preclusion, not meant for that non-resident. Inasmuch as Verser seeks to get Universal to pay Orija these benefits to which an "eligible" person under 2118(b) would be entitled, she lacks standing as a non-resident.

In this case, Orija does not seek to force Universal to pay him Delaware PIP minimum benefits, and even if he did, there are lingering significant jurisdictional issues.⁴⁶ The party seeking to "force" payment or to exclude is not the owner of a vehicle registered here and insured under the laws of this state.

Conclusion

For the reasons stated herein:

1. Third-party plaintiff Jennifer Verser's motion for declaratory judgment that third-party defendant Universal must make certain minimum benefit payments is DENIED.

⁴⁶ But see *State Farm Mut. Auto Ins. Co. v. Dann*, 794 A.2d 42 (Del. Super. 2002).

2. Plaintiffs Victor and Wanda Orija's motion *in limine* to admit special economic damages is GRANTED.

3. Third-party defendant Universal's motion to dismiss or for summary judgment is GRANTED.

IT IS SO ORDERED.

J.