IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR SUPERIOR COUNTY

HILLARY KATZ,	)	
	)	
Plaintiff,	)	
v.	)	C.A. No. 07C-02-037-JEB
	)	
STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY,	)	
	)	
	)	
Defendant.	)	

Submitted: December 10, 2007
Decided: May 22, 2008

OPINION

Defendants' Motion for Summary Judgment.
Motion Granted.

Appearances:

Kevin G, Healy, Esquire, 16 Polly Drummond Hill Road, Newark, Delaware.
Attorney for Plaintiff Hillary Katz.

Colin M. Shalk, Esquire, P.O. Box 1276, Wilmington, Delaware.
Attorney for State Farm Automobile Insurance Company.

JOHN E. BABIARZ, JR., JUDGE.

The issue presented in this motion for summary judgment is whether Delaware's PIP statute permits an individual who is injured in a car accident and who is named on an insurance policy to recover overhead costs for a corporation of which the individual is the sole officer, sole shareholder and sole employee. Delaware's no-fault insurance statute provides that an injured person shall be compensated for the net amount of lost earnings and that "lost earnings shall include net lost earnings of a self-employed person." Del. Code Ann. tit. 21, § 2118. Defendant moves for summary judgment, arguing that Plaintiff Hillary Katz was not self-employed but was an employee of the corporation who is entitled to recover only lost wages and health insurance premiums, which State Farm has paid for the period of disability. Plaintiff argues that as sole shareholder and officer of the corporation she was self-employed and entitled to recover the lost overhead costs of the corporation. For the reasons explained below, the Court finds as a matter of law that Plaintiff was an employee of the corporation and that the PIP statute does not guarantee corporate overhead to be paid to an employee of a corporation. Defendant's motion for summary judgment is granted.

On August 1, 2006, Plaintiff was injured in a motor vehicle accident with John B. Johnson in Bell Mawr, New Jersey. Plaintiff was the named insured on an insurance policy issued by Defendant State Farm. At the time of the accident,

Plaintiff was a licensed massage therapist with Stress Solutions, Inc., a Delaware corporation. She was the sole shareholder, officer, director, and employee of the corporation. Plaintiff's personal tax returns list her income as what she received as an employee of Stress Solutions, Inc. The payroll summary for 2006 lists her as the employee of Stress Solutions, Inc., as does the corporate tax return for the reporting period due April 30, 2006. Stress Solutions, Inc. filed a corporate tax return which Plaintiff signed as the president of the corporation.

Following the accident, Plaintiff was unable to work and Stress Solutions, Inc. did not generate any further revenue. Defendant State Farm has reimbursed Plaintiff for her monthly net wage loss and monthly health insurance premiums for the disability period from January 2007 through May 2007 in the amount of $6875.61.

Plaintiff filed an action for additional lost wages under the no-fault PIP statute. In addition to her lost wages and health insurance premiums, Plaintiff seeks reimbursement for the corporation's monthly overhead costs, which she lists as follows:

Rent	=	$550.00
Cingular	=	$ 81.00
Verizon	=	$192.00
Yellow Bk	=	$151.00
Credit Care	=	$ 50.00
Bank Chg.	=	$ 10.00
Acc't	=	$125.00

AOL	=	$ 26.00
Total	**=**	**$1188.00**

Defendant moved for summary judgment, arguing that Plaintiff is an employee of the corporation and therefore not entitled to recover its overhead costs.

Summary judgment is to be granted only where the record shows that there is no genuine issue as to any material fact, and that the moving party is entitled to judgment as a matter of law.[1] The record must be read in the light most favorable to the plaintiff.[2]

Delaware's PIP statute provides that "lost earnings shall include net lost earnings of a self-employed person."[3] It does not define "lost earnings" or "self-employed." In *State Farm Mut. Auto Ins. Co. v. Nalbone*, 569 A.2d 71 (Del. 1989), the Delaware Supreme Court held that the phrase "lost wages" was defined by ascertaining whether the injured employee suffered any out-of-pocket loss for which she has not received full compensation through a combination of employer benefits

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[1]Superior Court Civil Rule 56(c).

[2]*Borish v. Graham*, 655 A.2d 831 (Del. Super. Ct. 1994).

[3]The pertinent portion of the PIP statute provides as follows:
[T]he owner [shall have] insurance on such motor vehicle providing the following minimum insurance coverage: . . . (2) a. Compensation to injured persons for reasonable and necessary expenses incurred within 2 years from the date of the addicent for: . . . . 2. Net amount of lost earnings. Lost earnings shall include net lost earnings of a self-employed person." DEL. CODE ANN. TIT. 21, § 2118(a)(2)a.2.

and PIP payments.

Defendant argues that as an employee of the corporation Plaintiff is not entitled to recover the amount of the lost corporate overhead. Defendant asserts that a corporation is a legal entity distinct from the shareholders,[4] and argues that the fact that one person owns all the corporate stock does not merge his identity with that of the corporation.[5] Defendant concedes that when a sole proprietor purchases an insurance policy under his trade name, the trade name is equated with the proprietor's name, making the proprietor an insured. But Defendant argues that a corporate shareholder is not necessarily an insured under a corporate policy.[6] Plaintiff has not merged her identity with the corporation, and in fact has created a legal distinction between herself and Stress Solutions, Inc.

Plaintiff provides no case law or other precedent to the contrary. She relies in part on *Crum & Forster Ins. Group v. Wright*,[7] which holds that injured employees are entitled to expenses incurred by loss of employer-paid health insurance premiums, as part of the notion of "lost earnings" embodied in the statute. Health insurance

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[4]*Del Collo v. Housten*, 1986 WL 5841 (Del. Super.).

[5]*Martin v. D.B. Martin Co.*, 88 A. 612 (Del. Ch. 1913).

[6]*Del Collo v. Housten*, 1986 WL 5841 (Del. Super.).

[7]634 A.2d 373, 376 (Del. 1993).

premiums have been paid in this case, and *Crum* does not deal with the question of whether the injured parties were self-employed, which is the issue here.

Plaintiff cites to cases from three other states as support for her position that she is self-employed, but none of the cases is helpful to her. In *Whitney v. State*,[8] the court found that the claimant's promotional activities on behalf of a defunct corporation constituted neither self-employment nor employment for purposes of workmen's compensation. In *In re Kaplan*,[9] the court was assessing employment status for workmen's compensation purposes based on a three-part test that Delaware does not use. Finally, in *Celina Mut. Ins. Co. v. Lake States Ins. Co.*,[10] the owner of a trucking business was injured in a vehicle owned by the business, and the court held that the business insurer was solely responsible for providing PIP benefits and that the insurer of owner's personal vehicles was not required to contribute.

In considering a post-trial motion to amend a judgment to add overhead costs to the award of lost earnings, this Court has found that for a sole proprietor, some recovery for overhead under the PIP statute is probably "legally permissible."[11]

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[8]783 P.2d 459 (Nev. 1989).

[9]893 A.2d 669 (NH 2006).

[10]549 N.W.2d 834 (MI 1996).

[11]*Kapsalis v. State Farm Mutual Ins. Co.*, 1997 WL 529590, at **1 (Del. Super.).

Plaintiff argues that the result should be the same here and that any consideration of corporate law should give way to the purpose of § 2118, which is in part to put a self-employed person on an equal footing with those employed by others.[12] The Court is not persuaded that the essential principle of corporate law, that the corporation is a business entity separate from its employees, is in conflict with PIP law, which acknowledges the existence of different entities, both individual and business. A corporation is an artificial being created by law,[13] and this fiction is set aside only when it has been used for fraudulent acts.[14]

When Plaintiff decided to incorporate, she set up a business structure that was separate from herself and would protect her from certain types of liability. She did not choose to add Stress Solutions, Inc. to her motor vehicle insurance policy as an insured or to purchase business interruption insurance. This Court has found that in the context of workmen's compensation, the loss suffered by an employee of a corporation is protected while the loss suffered by the corporation and the sole shareholder are not protected.[15] The Court finds that Plaintiff was an employee of

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[12] *Id*.

[13] *Joseph Greenspon's Sons Iron & Steel Co. v. Pecos Valley Gas Co.*, 156 A. 350 (Del. 1931).

[14] *Martin v. D.B. Martin Co.*, 88 A. 612 (Del. Ch. 1913).

[15] *Doherty v. Doherty-Wickersham Funeral Homes*, 1979 WL 184088, at *1 (Del. Super.).

Stress Solutions, Inc. and that as an employee she has recovered her reasonable and necessary expenses consisting of lost wages and health insurance premiums. She is not entitled to recover the costs of corporate overhead. Defendant's motion for summary judgment is ***Granted.***

It Is So ORDERED.

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Judge John E. Babiarz, Jr.

JEB,Jr/bjw/ram
Original to Prothonotary