IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR NEW CASTLE COUNTY

TERESA AMEER-BEY,	)	
	)	
Plaintiff,	)	
	)	
v.	)	
	)	C.A. No. 00C-11-031 RRC
LIBERTY MUTUAL FIRE INSURANCE COMPANY,	)	
	)	
Defendant.	)	

Submitted: January 30, 2003
Decided: April 7, 2003

Upon Defendant's "Motion in Limine to Exclude the Plaintiff's Claim for Lost Wages." DENIED.

Upon Defendant's "Motion in Limine to Exclude the Plaintiff's Claim for Medical Expenses Related to Shoulder Treatment." DENIED IN PART; DEFERRED IN PART.

ORDER

This 7th day of April, 2003, upon consideration of the submissions of the parties, it appears to this Court that:

1. This is a breach of contract action brought by plaintiff Teresa Ameer-Bey ("Plaintiff") against her automobile insurer, defendant Liberty Mutual Fire Insurance Company ("Liberty Mutual"). Plaintiff was involved in an automobile accident in October 1998 with a third-party tortfeasor, as a result of which Plaintiff alleges she "sustained personal injuries and mental

anguish[ ][,]"[1] she "incurred extensive medical bills[,]"[2] and she "sustained a loss of earning and earning capacity, as well as permanent injuries."[3] Liberty Mutual generally denied causation and damages.

Currently before the Court are two motions in limine filed by Liberty Mutual, resolution of which requires the Court to determine whether a damages-preclusion statute that is part of Delaware's compulsory "no-fault" law applies as well to Plaintiff's elective "uninsured/underinsured motorist" coverage, and whether certain medical bills already paid by Plaintiff's health insurer through a health insurance plan that Plaintiff contributed premiums to can nonetheless be recovered under the "no-fault" portion of Plaintiff's automobile insurance coverage.

Because the preclusion statute contained in Delaware's "no-fault" law does not apply to an "uninsured/underinsured motorist" claim and because the lost wages Plaintiff now seeks to recover from her uninsured motorist carrier would come from an independent "fund" created by Plaintiff herself, Liberty Mutual's motion relative to Plaintiff's lost wages is **DENIED**. And because Plaintiff has in effect paid for both her health insurance benefits as

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[1] Compl. ¶ 7.

[2] Id. ¶ 8.

[3] Id. ¶ 9.

well as her "no-fault" benefits, she cannot now be precluded from recovering the contested medical expenses from her "no-fault" carrier even though they had previously been paid by her health insurer, so Liberty Mutual's motion relative to those expenses is **DENIED,** with any decision on the fashion in which to redact the bills for those expenses **DEFERRED**.

2. In the first count of her Complaint, Plaintiff alleged that "[a]t the time of the…motor vehicle collision…[the tortfeasor] was an uninsured driver[ ]"[4] so that Plaintiff "[wa]s entitled to uninsured motorist benefits under [her] policy of insurance…";[5] in the second count of her Complaint, Plaintiff alleged that her automobile insurance policy "also provided for "no-fault" coverage, which included payment of [P]laintiff's medical bills incurred as a result of the…accident."[6] In both counts, Plaintiff averred that Liberty Mutual had "breached its contract" with her because it: 1) had failed to pay uninsured motorist benefits; and 2) had failed to pay her medical bills. While Liberty Mutual "admitted" that both uninsured motorist coverage and "no-fault" coverage "existed" and were "in force" at the time of Plaintiff's

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[4] Id. ¶ 10.

[5] Id. ¶ 11.

[6] Compl. ¶ 14.

accident, Liberty Mutual nonetheless denied that it had breached its contract of automobile insurance with Plaintiff.

3. Liberty Mutual has filed three motions: 1) a "Motion in Limine to Exclude the Plaintiff's Claim for Lost Wages"; 2) a "Motion in Limine to Exclude the Plaintiff's Claim for Medical Expenses Related to Shoulder Treatment"; and 3) a "Motion in Limine to Exclude Evidence of Medical Expenses Incurred through Rehabilitation Associates." All three motions involved the "collateral source" rule, under which "a tortfeasor has no right to any mitigation of damages because of payments or compensation received by the injured person from an independent source."[7] (Plaintiff and Liberty Mutual have resolved the third motion (involving Rehabilitation Associates) extrajudicially, leaving only the two former motions for decision.)

4. In its Motion to Exclude the Plaintiff's Claim for Lost Wages, Liberty Mutual initially argues that the approximately $5,971 in lost wages Plaintiff is seeking is "not recoverable under the no-fault portion of [Plaintiff's] auto insurance policy[ ]"[8] because the Plaintiff was partially

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[7] Yarrington v. Thornburg, 205 A.2d 1, 2 (Del. 1964) (stating that the "collateral source" rule is "firmly embedded" in the law of the State of Delaware). Black's similarly defines the rule: "if an injured party receives compensation for its injuries from a source independent of [a] tortfeasor, the payment should not be deducted from the damages that the tortfeasor must pay." BLACK'S LAW DICTIONARY 256 (7th ed. 1999).

[8] Def.'s Mot. in Limine to Exclude Lost Wages ¶ 2.

compensated for these lost wages by her employer through a non-contributory wage continuation plan (*i.e.*, Plaintiff paid nothing for this benefit).[9] Plaintiff's averment that "[a]s a result of the…[October 1998] motor vehicle collision[ ] [P]laintiff…sustained a loss of earning and earning capacity" falls, however, within the "uninsured motorist" portion of Plaintiff's Complaint.[10]

Liberty Mutual also argues that the amount of Plaintiff's lost wages "cannot be claimed as special damages"[11] under Plaintiff's uninsured motorist coverage because they are one of the type of benefits described in title 21, section 2118(a)(2) of the Delaware Code,[12] and are therefore precluded from being introduced into evidence at trial by operation of title 21, section 2118(h).[13] Liberty Mutual contends that the "no-fault"

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[9] Letter from Monica N. Naylor (H.R. Consultant to BCBS of Delaware) to Edward T. Ciconte of 2/28/02 (Ex. "A" to Def.'s Mot. in Limine to Exclude Lost Wages).

[10] Compl. ¶ 9.

[11] Def.'s Mot. in Limine to Exclude Lost Wages ¶ 4.

[12] Section 2118 (Delaware's "no-fault" statute) provides in pertinent part that any motor vehicle required to be registered in Delaware must be insured to pay compensation to injured persons for reasonable and necessary expenses for "[n]et amount of lost earnings." <u>See</u> DEL. CODE ANN. tit. 21, § 2118(a)(2)a.2. (1995).

[13] "Any person eligible for benefits described in…[section 2118(a)(2)]…is precluded from pleading or introducing into evidence in an action for damages against a tortfeasor those damages for which compensation is available under…[that section]…whether or not such benefits are actually recoverable." DEL. CODE ANN. tit. 21, § 2118(h) (1995).

preclusion applies to Plaintiff's "uninsured motorist" claim because Plaintiff is a person required to carry "no-fault" insurance (by virtue of the fact that her vehicle was registered in Delaware) and therefore section 2118(h) is relevant because "lost wages" are a statutorily-proscribed "no-fault type [of] benefit."[14]

Plaintiff initially responds that the April 4, 2002 Pretrial Stipulation continues to govern the ultimate trial in this case and that Liberty Mutual's motions "should [therefore] be rejected by the Court [because they were not therein identified]."[15] Plaintiff also contends that by virtue of a stipulation entered into between the parties to the amount of lost wages and dates Plaintiff missed work, Liberty Mutual is now precluded from "argu[ing] against the admission of certain evidence, which evidence it previously agreed to by stipulation."[16] Liberty Mutual counters that "[t]he stipulation was entered into…[only] so that it would not be necessary for the [P]laintiff to call employment witnesses and/or introduce income records to prove the amount of the claim."[17]

[14] Letter from Maria Poehner Marcantoni to the Court of 11/1/02, at 1 (Dkt. #44).

[15] Pl.'s Resp. to Def.'s Mot. in Limine to Exclude Lost Wages ¶ 3.

[16] Pl.'s Resp. to Def.'s Mot. in Limine to Exclude Lost Wages ¶ 4.

[17] Def.'s Reply in Support of Mot. in Limine to Exclude Lost Wages ¶ 2.

Substantively, Plaintiff argues that the preclusive effect of title 21, section 2118(h) does not apply under her uninsured motorist claim for lost wages "[b]ecause the [P]laintiff was not eligible to receive no-fault benefits which duplicated her disability benefit[s] [paid by her employer under the non-contributory plan]";[18] therefore, Plaintiff contends, she can recover her lost wages "under the collateral source rule."[19]

At oral argument, Plaintiff additionally contended that Duphily v. Delaware Electric Cooperative, Inc.[20] supports her argument of the admissibility of her lost wages because that case "recognized" a plaintiff's right to recover from a tortfeasor even when that plaintiff is "eligible" to recover from an insurer. In response, Liberty Mutual argues that "Duphily does not address the issue before the Court[ ][,]" because that case "deal[t] with the interplay of a workers compensation carrier's rights and the ["no-fault"] preclusion statute, which is not involved at the case at bar…."[21]

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[18] Pl.'s Resp. to Def.'s Mot. in Limine to Exclude Lost Wages ¶ 5.

[19] Id.

[20] 662 A.2d 821 (Del. 1995) (en banc) (holding that in an action against an alleged tortfeasor, a workers' compensation insurance carrier which has already compensated an injured worker is permitted to introduce evidence of the injured worker's medical expenses to protect the carrier's right of subrogation).

[21] Letter from David G. Culley to the Court of 1/28/03, at 2 (Dkt. #27 in Calvarese).

5. In Yarrington v. Thornburg,[22] wherein the Delaware Supreme Court recognized that the "collateral source" rule was "firmly embedded" in the law of the State of Delaware, the plaintiff was injured while riding as a passenger in an automobile being driven by the defendant. At the time of the accident, the defendant "carried an insurance policy which insured him against liability for bodily injuries and property damage caused by operation of the automobile[ ][,]" and the policy "also included an agreement to pay the medical expenses, up to $5,000, suffered by any person injured while occupying…the [defendant]'s automobile."[23] The defendant's insurer therefore paid the plaintiff $5,000 (because his medical expenses apparently were in excess of that amount), and the plaintiff thereafter proceeded against the defendant (as well as the third party tortfeasor and his employer) at trial.

"At the trial [the defendant] requested that[ ] should the jury find for the plaintiff, they be instructed to deduct $5,000 from the damages assessed against him."[24] By agreement, however, counsel decided not to request the giving of such a jury instruction, but rather opted to resolve the matter post-verdict. When the jury awarded the plaintiff $40,000 ($36,000 worth of

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[22] 205 A.2d 1 (Del. 1964).

[23] Yarrington, 205 A.2d at 2.

[24] Id.

which was attributed to the defendant), this Court ordered the $5,000 to be credited against the plaintiff's $36,000 judgment.

On appeal, the Supreme Court affirmed the Superior Court's crediting the defendant the $5,000 because "[h]is purchase of the insurance and payment of premiums were the sole cause for the existence of the [$5,000] fund and…he should…receive credit for the fund thus created by him."[25] Thus, the Supreme Court stated, the "collateral source" doctrine "permit[s] [a] tortfeasor to obtain the advantage of payments made by himself or from a fund created by him…[because] the payments come…from the defendant himself."[26]

Although the Yarrington Court did not clearly delineate whether the insurance at issue there was of the "no-fault" or "uninsured/underinsured motorist" variety, the Delaware Supreme Court did make clear in State Farm Mutual Automobile Insurance Company v. Nalbone[27] that, insofar as "no-fault" insurance benefits are concerned, "[t]he no-fault statute…limits the collateral source rule by precluding an insured from suing a tortfeasor for

[25] Id. at 2-3.

[26] Id. at 2.

[27] 569 A.2d 71 (Del. 1989) (en banc) (holding that an insured is not entitled to be compensated for net wages lost while the insured is unable to work if the insured has received or is receiving compensation pursuant to a non-contributory wage continuation plan).

damages for which compensation is available under the [“no-fault”] statute[ ][,]” and that such preclusion results “whether or not…[the “no-fault”] benefits are actually recoverable.”[28] State Farm Mutual Automobile Insurance Company was therefore entitled in that case to a declaratory judgment that it did not owe its insured “no-fault” benefits, as the insured had already been compensated by her employer through a non-contributory wage continuation plan.

In its ruling (which was confined by the facts of that case to a “no-fault” context), the Nalbone Court did however recognize that “the policy goals of no-fault insurance can best be served by application of principles of contract rather than tort law.”[29] “Thus,” the Court stated, “the extent to which the collateral source rule should be applied to permit double recovery should depend upon the contractual expectations that underlie the collateral source payment.”[30] After stating that a double recovery should be permitted in certain circumstances, the Nalbone Court held that “the conditions under which double recovery should be allowed [will] best be determined by

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[28] Nalbone, 569 A.2d at 73 (quotations omitted).

[29] Id. at 75.

[30] Id.

examining the consideration that has been paid[ ]";[31] in that Court's view, "any consideration will support recovery," so long as that consideration is "not based on speculation."[32] However, the Court stated, "[i]f the collateral payments are received *gratis*, then their receipt should bar recovery…."[33]

Finally, in what was termed a "case of first impression under the laws of Delaware," the United States Court of Appeals for the Third Circuit predicted in Lomax v. Nationwide Insurance Company,[34] that "the Delaware Supreme Court would apply the collateral source rule to the [uninsured motorist context[ ][,]"[35] *i.e.*, a risk-adverse insured who had paid a premium for uninsured motorist coverage (which is supplemental coverage under Delaware law, in contrast to compulsory "no-fault" coverage) would be entitled to a "double recovery." The Lomax Court's reasoning was predicated in large part upon what it determined were the separate policies behind the two types of coverage: 1) the fact that "no-fault benefits are designed to assure prompt payment to an injured person irrespective of fault[

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[31] Id.

[32] Id. at 76.

[33] Nalbone, 569 A.2d at 75.

[34] 964 F.2d 1343 (3d. Cir. 1992).

[35] Lomax, 964 F.2d at 1348.

]" while uninsured/underinsured motorist benefits are "designed to compensate innocent persons injured by an automobile who are unable to obtain recompense from unknown or [impoverished] negligent tortfeasors…";[36] 2) the fact that uninsured/underinsured motorist benefits are "based on fault[ ]";[37] and 3) the fact that uninsured/underinsured coverage is "not compulsory[ ]" while "no-fault coverage…is mandatory…."[38]

The Lomax Court ultimately concluded "[i]f an insurer is allowed to reduce the judgment against it by the amount of collateral benefits paid," then "insureds will suffer a net loss because they will derive no benefit from the [uninsured/underinsured motorist] insurance for which they paid premiums."[39]

5. Here, Plaintiff has already been partially compensated for her wage loss through a non-contributory wage continuation plan established by her employer. As such, Nalbone dictates that the wage loss claim be denied under the "no-fault" coverage of Plaintiff's insurance policy, as "the

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[36] Lomax, 964 F.2d at 1346.

[37] Id.

[38] Id.

[39] Id. at 1347.

collateral payments [we]re received *gratis*,"[40] and Plaintiff therefore had no "contractual expectations…underl[ying] the collateral source payment."[41]

In contrast to the *gratis* nature of Plaintiff's wage continuation plan, however, Plaintiff was in fact required to pay a premium for her supplemental uninsured motorist insurance coverage.[42] That such a premium was paid, *i.e.*, supported by some form of consideration, is evident by Liberty Mutual's agreement that uninsured motorist coverage "existed" and was "in force" at the time of Plaintiff's accident.[43]

When Plaintiff paid her premium for supplemental uninsured motorist coverage, it was not unreasonable for her to expect to recover under that policy, should she need to do so. Because of her payment of the insurance premium, Plaintiff created an independent "fund" from which she could draw, as such a draw would result "from a fund created by h[er]…."[44] Thus Plaintiff's expectations of a "double recovery" are not unreasonable given

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[40] Nalbone, 569 A.2d at 75.

[41] Id.

[42] Title 18, section 3902 of the Delaware Code (Delaware's uninsured/underinsured motorist insurance statute) provides that uninsured coverage can be "rejected in writing, on a form furnished by the insurer…by an insured named therein…." DEL. CODE ANN. tit. 18, § 3902(a)(1) (1999).

[43] Answer ¶ 4.

[44] Yarrington, 205 A.2d at 2.

that she is able to recover from Liberty Mutual under her uninsured motorist coverage, despite being unable to recover under her "no-fault" by virtue of the payments made by the wage continuation plan.[45] Therefore, subject to proof of causation and damages at trial, Plaintiff should be entitled to have her wage claim paid by Liberty Mutual through Plaintiff's uninsured motorist coverage, lest she "derive no benefit from the [uninsured motorist] insurance for which [she] paid premiums."[46]

This Court's finding that Plaintiff should be permitted to recovery her lost wages at trial under her "uninsured/underinsured motorist" coverage is consistent with the Lomax Court's holding. This Court finds the Lomax Court's prediction that Delaware would permit such a recovery to be persuasive, as that prediction is supported by the above-cited Delaware case law, *i.e.*, a risk-averse insured may contract for additional recovery by purchasing supplemental uninsured motorist coverage. This finding is also in accord with Plaintiff's assertion that the Lomax decision "recognizes that the applicability of the collateral source rule can be limited in no[-]fault

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[45] State Farm Mut. Auto. Ins. Co. v. Nalbone, 569 A.2d 71 (Del. 1989) (en banc) (holding that an insured is not entitled to recover "no-fault" benefits as compensation for wage losses non actually sustained because payments have been received from a collateral source unsupported by consideration).

[46] Lomax, 964 F.2d at 1347.

cases[47] for reasons that are not appropriately considered in tort actions."[48] The Court therefore adopts the Lomax Court's reasoning, despite Liberty Mutual's contention that the Lomax Court "did not consider… the applicability of the language…at [s]ection 2118(h)."[49]

Liberty Mutual's argument that Plaintiff's lost wage claim is precluded by operation of title 21, section 2118(h) of the Delaware Code is unpersuasive. The Court initially notes that that statute is part of Delaware's "no-fault" statute, and not the "uninsured/underinsured" coverage described at title 18, section 3902. Given the entirely separate policies and statutory frameworks behind the two types of coverage, this Court declines to find that a portion of the "no-fault" statute applies equally to the uninsured motorist statute context.

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[47] Presumably Plaintiff is referring to the effect of section 2118(h), although the Lomax decision does not explicitly reference that statute.

[48] Letter from Kenneth M. Roseman to the Court of 11/4/02, at 1 (Dkt. #22 in Anthony Calvarese v. State Farm Mutual Insurance Company, C.A. No. 00C-11-243 RRC). Calvarese is an automobile personal injury case with similar "collateral source" issues involved; by Order entered in that case simultaneously herewith, the Court has denied the defendant's "Motion in Limine [to Exclude Plaintiff's Claim for Lost Wages]" in that case because the plaintiff there had established an independent "fund" from which to recover by virtue of maintaining supplementary "uninsured/underinsured motorist" coverage on his vehicle. Calvarese v. State Farm Mut. Ins. Co., Del. Super., C.A. No. 00C-11-243, Cooch, J. (Apr. 7, 2003) (ORDER).

[49] Letter from Maria Poehner Marcantoni to the Court of 11/1/02, at 1.

Moreover, the case law relative to section 2118(h) makes it clear that such an extension in unwarranted. In Mullins v. Klase,[50] (a case in which this Court held that the preclusive effect of section 2118(h) applied to a situation wherein a "no-fault" insurer had become insolvent because the statute specifically states it operates "whether or not such benefits are actually recoverable"), this Court expressly stated:

> Thus, Yarrington and Nalbone do not address [']boarding['] damages, especially…["no-fault"] claims. At the most, they may control whether [a] [p]laintiff can recover from [its]…["no-fault"] carrier on top of the health insurance benefits [it] already has received. If it comes to that, the [C]ourt assumes without deciding, that [a] [p]laintiff might recover from [its]…["no-fault"] carrier if [it] proves that [it], and not [its] employer, paid for the health insurance coverage that [it] received.[51]

Under that reasoning, Mullins is in agreement with Yarrington and Nalbone that a party should enjoy the benefits of an independent "fund" contractually created by the party itself.

Furthermore, Read v. Hoffecker,[52] a case upon which Mullins v. Klase heavily relied, was limited only to the "no-fault" insurance context upon

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[50] C.A. No. 99C-04-182, 2001 WL 1198946 (Del. Super. Sept. 28, 2001).

[51] Mullins, 2001 WL 1198946, at *2.

[52] 616 A.2d 835 (Del. 1992) (holding that an out-of-state resident passenger in an out-of-state vehicle was not required to maintain Delaware "no-fault" insurance coverage so that the preclusion of title 21, section 2118(h) did not apply and thus the passenger could introduce evidence of her lost earnings and medical expenses into evidence at trial).

which it was decided. Similarly, Redding v. Ortega[53] (involving a plaintiff who was not permitted to introduce evidence of special damages), was also limited to the "no-fault" arena.

Because the lost wages Plaintiff now seeks to recover from her uninsured motorist carrier, Liberty Mutual, would come from an independent "fund" created by Plaintiff herself, Liberty Mutual cannot object to the introduction of the extent of her injuries simply because she has already been compensated in part by her employer. The preclusive effect of section 2118(h) otherwise has no application to a claim for "uninsured motorist" benefits. Accordingly, Liberty Mutual's "Motion in Limine to Exclude the Plaintiff's Claim for Lost Wages" is **DENIED**.[54]

6. In addition to the Motion in Limine to Exclude Lost Wages, Liberty Mutual also filed a "Motion in Limine to Exclude the Plaintiff's Claim for Medical Expenses Related to Shoulder Treatment." Through that motion, Liberty Mutual seeks to exclude from evidence at trial a bill from

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[53] C.A. No. 02C-03-121, 2002 WL 31814649 (Del. Super. Nov. 12, 2002) (holding that a plaintiff injured while operating a borrowed car fell within the preclusion of section 2118(h) even though that car had no insurance coverage because the car was a Delaware-registered vehicle and therefore the "no-fault" statute applied), appeal docketed, No. 682, 2002 (Del. Dec. 11, 2002).

[54] The Court has elected to resolve Liberty Mutual's motion on the merits and therefore does not reach Plaintiff's argument that Liberty Mutual had previously agreed that Plaintiff's lost wages would be admissible.

Christiana Care Health Services in the amount of $3,979.47 and a bill from First State Orthopedics in the amount of $2,981. (Plaintiff seeks to have Liberty Mutual pay those bills under Plaintiff's "no-fault" insurance coverage.) Both bills pertain to treatment of Plaintiff's right shoulder, and Liberty Mutual contends that Plaintiff "did not sustain an injury to her right shoulder in th[e] [October 1998] motor vehicle accident, and therefore [the bills should be excluded because] the[y]…would not be covered by the no-fault portion of the [P]laintiff's auto insurance policy."[55] Liberty Mutual further contends that "[t]he medical expenses…were paid by her health insurance carrier," and that "[t]here is no balance due to either medical provider."[56]

In response, Plaintiff argues that "the [P]laintiff's health insurance coverage is a contributing plan…and therefore…[P]laintiff…pa[id] consideration for the coverage[ ]"[57] so that the "collateral source" rule applies to the amount of the bills. Plaintiff attaches a letter stating that

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[55] Def.'s Mot. in Limine to Exclude Medical Expenses for Shoulder ¶ 3.

[56] Id. ¶ 2.

[57] Id. ¶ 3.

Plaintiff "contributed to her health insurance coverage…by having an amount deducted from each pay check."[58]

In its Reply, Liberty Mutual states that it "will concede the admissibility of the medical bills from Christiana [Care Health Services]…and First State Orthopedics…if the Court will order that the information pertaining to…[Plaintiff's health insurer's] payments [are] not redacted from the billing statements."[59]

Under the above analysis, however, Nalbone makes clear that where an insured "has paid consideration for recovery from a collateral source, then [double] recovery should be allowed."[60] Here, Plaintiff's health insurance required some contribution from Plaintiff herself; accordingly, she has paid for both those benefits and for the "no-fault" benefits under which she now seeks to recover the contested medical expenses. As such, Plaintiff should be permitted to introduce evidence of her medical expenses relative to Christiana Care Health Services and First State Orthopedics. Although Nalbone decided the issue of admissibility of "lost wages" under the "no-

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[58] Letter from Monica N. Naylor (H.R. Consultant to BCBS of Delaware) to Edward T. Ciconte of 5/28/02 (Ex. "B" to Pl.'s Resp. to Def.'s Mot. in Limine to Exclude Medical Expenses for Shoulder).

[59] Def.'s Reply in Support of Mot. in Limine to Exclude Medical Expenses for Shoulder ¶ 3.

[60] Nalbone, 569 A.2d at 75.

fault" statute, the result should be the same here, where "medical expenses" are concerned: Plaintiff "should be permitted, as a matter of contract law, to receive a double recovery since that is what [s]he paid for."[61]

Accordingly, Liberty Mutual's motion is **DENIED** insofar as the total exclusion of the subject bills; in what fashion the bills should be redacted, however, is a decision that this Court will defer ruling upon, and counsel should confer in an effort to resolve the issue before trial.

7. Based on the above, Liberty Mutual's "Motion in Limine to Exclude the Plaintiff's Claim for Lost Wages" is **DENIED** and Liberty Mutual's "Motion in Limine to Exclude the Plaintiff's Claim for Medical Expenses Related to Shoulder Treatment" is **DENIED IN PART** and **DEFERRED IN PART**.[62]

IT IS SO ORDERED.

___________/s/____________
Richard R. Cooch, J.

oc: Prothonotary
xc: Edward T. Ciconte, Esquire, Attorney for Plaintiff
Maria Poehner Marcantoni, Esquire, Attorney for Defendant

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[61] Id.

[62] Given the above analysis, the Court need not consider Plaintiff's secondary argument that Duphily applies to the facts of this case because that case "recognized" a plaintiff's right to recover from a tortfeasor even when that plaintiff is "eligible" to recover from an insurer.