

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR KENT COUNTY

JAMES J. MOORE and	:	
NIKOLE R. MOORE,	:	C.A. No. 99C-05-028
	:	
Plaintiffs,	:	
	:	
v.	:	
	:	
DAVID B. McBRIDE,	:	
	:	
Defendant.	:	

Submitted: March 27, 2001  
Decided: May 31, 2001

**ORDER**

Upon Defendant's Motion in Limine Regarding the  
Admissibility of a Workers' Compensation Lien. Denied.

Steven Schwartz, Attorney at Law, P.A., Dover, Delaware, Attorney for the Plaintiffs.

Charles P. Coates, III, Bouchelle & Palmer, Newark, Delaware, Attorneys for the  
Defendant.

WITHAM, J.

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This 31<sup>st</sup> day of May, 2001, upon consideration of the letter memoranda submitted by the parties, it appears to the Court that:

James J. Moore (“Plaintiff” or “Moore”) brought this personal injury action for injuries sustained from a motor vehicle accident which occurred on May 15, 1997, at the intersection of Dexter Corner Road (Co. Rd. #36) and Blackbird Station Road (Co. Rd. #463) in New Castle County, Delaware. Plaintiff alleges that his injuries were caused by the negligence of David B. McBride (“Defendant” or “McBride”). When the accident occurred, Moore, a Federal employee, was operating a truck owned by the U.S. Government. Because the injury occurred in the course of his employment, Moore received workers' compensation benefits from his employer, the U.S. Department of Labor. The truck involved in the accident is owned by the United States government and is not a Delaware registered vehicle, and therefore, is not insured under Delaware Personal Injury Protection (“PIP”).<sup>1</sup>

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<sup>1</sup> **Delaware’s PIP statute did not apply to the U.S. government vehicle:**

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**21 Del. C. § 2118.** Requirement of insurance for all motor vehicles required to be registered in this State; penalty.

**(a)** No owner of a motor vehicle required to be registered in this State, other than a self-insurer pursuant to § 2904 of this title, shall operate or authorize any other person to operate such vehicle unless the owner has insurance on such motor vehicle providing the following minimum insurance coverage.

**21 Del. C. § 316.** Exceptions from application of certain provisions of this title.

Every motor vehicle, trailer, semitrailer and pole trailer when driven or moved upon a highway shall be subject to this title and inspection except:

**(3)** Any vehicle owned by the government of the United States and plainly marked to indicate such ownership and identify the particular vehicle, unless said vehicle is under lease with a right of purchase in the lessee.

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Moore alleges that he sustained injury to his low back and a 40% impairment of the lumbar spine. Benefits for Moore's medical expenses and lost federal wages were paid by his employer, the U.S. Department of Labor, as workers' compensation benefits. These workers' compensation benefits totaled \$14,227.23. At the time of the accident, Moore also had a second, part-time job with Lowes in Dover. The workers' compensation benefits paid by the U.S. Department of Labor did not pay for Plaintiff's lost wages from his part-time job. However, Moore did receive \$7,531.68 for the wages he lost from his Lowes' employment through his wife's State Farm Delaware auto insurance policy.<sup>2</sup> The dispute at this time concerns the admissibility of the medical expenses and lost wages which were recovered through workers' compensation. Plaintiff claims that the medical expenses and lost wages paid pursuant to his employer's workers' compensation plan may be admitted into evidence in this case.<sup>3</sup> Defendant argues that Moore's expenses and lost wages are not admissible

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<sup>2</sup> **Mrs. Moore's Delaware automobile insurance policy was for her personal car which was not involved in the subject accident.**

<sup>3</sup> **Plaintiff concedes that evidence of his lost wages from Lowes is not admissible**

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because the Plaintiff had access to PIP benefits through his wife's auto insurance policy.

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**because they were recovered through his wife's no-fault insurance policy.**

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The dispute in this matter stems from the interaction of two statutes, 21 *Del. C.* § 2118(h) and 19 *Del. C.* § 2363(e). 21 *Del. C.* § 2118(h)<sup>4</sup> precludes evidence of those damages for which compensation is available under the no-fault statute (medical expenses, lost earnings and/or property damage) from being pled or introduced into evidence at trial. On the other hand, under 19 *Del. C.* § 2363(e),<sup>5</sup> a workers'

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<sup>4</sup> 21 *Del. C.* § 2118(h) states,  
**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.**

<sup>5</sup> 19 *Del. C.* § 2363(e) states in part:

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compensation insurance carrier has a lien for monies received in pursuit of a third

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**Any recovery against the third party for damages resulting from personal injuries or death only, after deducting expenses of recovery, shall first reimburse the employer or its workers' compensation insurance carrier for any amounts paid or payable under the Workers' Compensation Act to date of recovery, and the balance shall forthwith be paid to the employee or the employee's dependents or personal representative and shall be treated as an advance payment by the employer on account of any future payment of compensation benefits, except that for items of expense which are precluded from being introduced into evidence at trial by § 2118 of Title 21, reimbursement shall be had only from the third party liability insurer and shall be limited to the maximum amounts of the third party's liability insurance coverage available for the injured party, after the injured party's claim has been settled or otherwise resolved.**

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party claim.

Two cases dealt with the interaction of these two statutes in a context similar to the situation currently before the Court, *Duphily v. Delaware Electric Cooperative, Inc.* and *Rice v. DeSantis*. Both of these cases did not consider the 1993 amendment to Section 2363 as their cause of actions arose before the amendment was enacted. The 1993 amendment imposed a ceiling on the workers' compensation lien equal to the amount of liability insurance carried by the tortfeasor, however, the ceiling will not affect the outcome of the case at bar. In *Duphily v. Delaware Electric Cooperative, Inc.*, the Supreme Court stated that they did “not believe that 21 *Del. C.* § 2118(h) was intended to foreclose the carrier’s rights under 19 *Del. C.* § 2363(d) for reimbursement of medical expenses simply because a motor vehicle was involved in the employee’s accident, especially when there has been no claim asserted for PIP benefits.” In *Duphily*, no PIP claim was ever made because the injury occurred as Duphily was standing on top of a double-wide trailer holding electrical wires out of the way so the trailer could be moved. Duphily was neither the operator of a vehicle nor technically a passenger on the double-wide and presumably that is why he did not make a PIP claim. In the immediate case, Defendant argues that the *Duphily* court limited its decision to their facts and that the facts in the matter *sub judice* are distinguishable. While the lack of a PIP claim in *Duphily* distinguishes it from the immediate case, the principles the Court used in formulating its decision are helpful. The workers' compensation insurance carrier paid Duphily’s medical expenses and



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claimed that the jury should be informed of the amount of payments. Because of the workers' compensation insurance carrier's statutory right of subrogation, the Court held that evidence of Duphily's medical expenses should have been admitted at trial. The Supreme Court noted that this result was proper "as a matter of fairness" and because it still prevents an employee from obtaining a double recovery, *i.e.* the workers' compensation claim and the PIP claim.

*Rice v. DeSantis* also examined the interaction of Section 2118, Section 2363 and *Duphily*. In *Rice*, the State of Delaware was both the workers' compensation insurance carrier and the PIP benefits carrier. The State paid \$45,592.51 in workers' compensation benefits which, pursuant to 19 *Del. C.* §2363, gave the State a lien against any recovery the plaintiff may have received against the defendants in that amount. The Defendant wanted to limit the introduction of the workers' compensation benefits paid by \$25,000, the amount of PIP coverage available. In rejecting this proposed limit, the Court noted that the State could potentially suffer a \$25,000 loss if it were to accept the defendant's position. The Court further stated that "[b]ecause the lien exists, fairness dictates that the State be able to introduce evidence sufficient to protect the lien." Plaintiff argues that extending the *Duphily* and *Rice* decisions to the immediate case is to continue the process of carving out exceptions to a statute. This Court agrees that setting up a patchwork of exceptions is disfavored; however, one of the Court's functions is to interpret statutes harmoniously, particularly those that seem to conflict.

One of the underlying purposes for both the Workers' Compensation Act and

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the Delaware PIP statute is the timely payment of benefits for injuries by either the employer or the no-fault insurer.<sup>6</sup> Another goal of these statutes is to provide a means by which to make the injured person whole. In light of these goals, the availability of PIP benefits will not be case dispositive in circumstances such as those presently before the Court. Similar to the *Rice* case, the existence of the lien by the workers' compensation carrier is a dominant factor in determining the admissibility of the damages paid by such carrier. Since any amount, even pain and suffering damages, is subject to the U.S. Department of Labor lien, fairness requires the admission of these damages. Moore should not be penalized because his employer paid benefits through their workers' compensation insurance carrier.

Another of the Court's primary concerns is the prevention of double recovery. The parties have agreed that the benefits paid pursuant to Moore's wife's no-fault

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<sup>6</sup> *See International Underwriters, Inc. v. Blue Cross & Blue Shield of Del., Inc.*, Del. Supr., 449 A.2d 197 (1982) (stating one of primary objectives of no-fault insurance law is prompt payment of medical expense, lost wages and property damage); *Kofron v. Amoco Chems. Corp.*, Del. Supr., 441 A.2d 226, 231 (1982) (explaining purpose of Workers' Compensation Act).

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insurer is inadmissible under 21 *Del. C.* § 2118. Therefore, the only damages that will be presented to the jury are those paid pursuant to the workers' compensation claim.

Any award for these damages is subject to the lien held by the U.S. Department of Labor which prevents Moore from obtaining a double recovery. Lastly, the Court is concerned with fairness to the U.S. Department of Labor's, the lien holder's, interests created by section 2623. Under the Workers' Compensation Act §2623, there is no exception for the lien created against third-party tort-feasors based on the availability of PIP benefits. The only limitation is the ceiling established by the amount of third-party liability insurance coverage available to the injured party. To be fair to both Moore and the workers' compensation insurance carrier, the amount of workers' compensation benefits will be submitted to the jury.

Therefore, the jury will be informed of the amount of payments made by the U.S. Department of Labor for Moore's medical expenses and lost wages, as well as the fact that any recovery for these expenses will be awarded to the U.S. Department of Labor rather than Moore. Defendant's motion to keep these expenses from being admitted to the jury is **denied**.

**IT IS SO ORDERED.**

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J.

dmh  
oc: Prothonotary

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xc: Order Distribution