IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR NEW CASTLE COUNTY

ROGER L. MULLINS and MARCELLA MULLINS,	)	
Plaintiffs,	)	
5.	)	C.A. No.: 99C-04-182-FSS
JOHN R. KLASE, JR.,	)	
Defendant.	)	

Submitted: February 28, 2001
Decided: May 31, 2001

OPINION AND ORDER

Upon Plaintiff's Motion in Limine – DENIED

Beverly Lynn Bove, Esquire, Jeffrey S. Friedman, Esquire, 1020 W. 18th Street, P.O. Box 1607, Wilmington, Delaware, 19899. Attorneys for Plaintiff.

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SILVERMAN, J.

Roger Mullins was injured in an automobile accident. Unfortunately, his no-fault carrier was insolvent and did not provide Mullins with personal injury protection, PIP, benefits. As far as the Court knows, Mullins also did not receive PIP through the Delaware Insurance Guaranty Association,[1] which is the entity established to protect insureds when their carriers go belly-up. Instead, Mullins' PIP was provided, in effect, by his medical insurance.

Mullins' personal injury claim is about to go to trial. Plaintiff has filed a motion in limine seeking permission to plead his medical expenses at trial. In other words, he intends to introduce, or "board," all of his "specials," including the ones covered by his medical insurance. Defendant has invoked the no-fault insurance law's provision precluding the introduction of PIP in an action against a tort-feasor. In order to decide whether Mullins can introduce all of his medical expenses, the Court must determine whether he is a person who is eligible for no-fault insurance special damage benefits. If Mullins is a "person eligible," the no-fault law's preclusion applies to him, and Plaintiff's motion must be denied.

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[1] **18 *Del. C.* §§ 4201-4223.**

I.

According to *Read v. Hoffecker*, under 21 *Del. C. §* 2118(h):

> **Any person eligible for [PIP] benefits [under the no-fault insurance law] . . . is precluded from pleading or introducing into evidence in an action for damages against a tortfeasor those [special] damages for which compensation is available under [the no-fault insurance law] without regard to any elective reductions in such coverage and whether or not such benefits are actually recoverable. It is settled that "person eligible" under *§* 2118[(h)] is "any person 'within a class of persons to whom the statutorily required [no-fault insurance] coverage extends'."[2]**

The "class of persons" referred to in *Read* and 21 *Del. C. §* 2118(h) is defined, in relevant part by 21 *Del. C. §* 2118(a)(2)(c).[3] Furthermore, under the statute, in order to decide if Mullins is precluded, the court must consider whether "compensation is available . . . without regard to . . . whether or not such benefits actually are recoverable."

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[2] ***Read v. Hoffecker*, Del. Supr., 616 A.2d 835, 837 (1992) *cited with approval in, Deel v. Rizak*, D. Del., 474 F. Supp. 45, 46 (1979).**

[3] **". . . applicable 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."

The court first must determine if Mullins is in the class of people for whom no-fault insurance is available. As provided above, that threshold issue does not turn on whether Mullins has no-fault coverage or on whether he can recover from his insolvent no-fault carrier. To satisfy the preclusion statute, it is enough that Mullins was the owner and operator of a vehicle that was registered in Delaware when it collided. Mullins, therefore, is in the class to whom no-fault coverage extends.

Having decided that Mullins is in the precludable class, the court next must decide whether the expenses that Mullins wants to introduce are benefits for which no-fault coverage is available. There is no dispute that the expenses ordinarily would have been covered by PIP. In this case, it is assumed that Mullins' PIP provider will never pay. Whether the benefits are recoverable, however, does not change their character. But for its insolvency, Mullins' no-fault carrier would have provided the benefits he intends to board. In other words, the expenses in issue are the sort of benefits for which no-fault coverage is available and which his PIP carrier should have covered.

In light of the court's findings, Mullins is precluded from introducing the expenses covered by his health insurance. The court understands

that Mullins basically did what the law requires. Nevertheless, through no apparent fault on his part, Mullins could not recover the PIP benefits to which he was entitled. Even so, the result here is mandated by the no-fault law's plain language. Mullins' poor choice of a PIP carrier does not justify shifting his PIP coverage to the alleged tort-feasor's carrier.

Delaware's no-fault insurance law limits claims and litigation against tort-feasors in automobile negligence cases. Every vehicle that is or should be registered in Delaware must be covered by insurance that provides PIP benefits for its occupants. In the event of a personal injury accident, the injured motorist is expected to look to his own insurance for PIP. By the same token, tort-feasors and their carriers are not expected to provide PIP to others. Here, an injured motorist is attempting to hold the tort-feasor accountable for the injured motorist's PIP benefits. That result would be contrary to the no-fault law's purpose. The no-fault statute's preclusion, as presented above, does not care whether the PIP benefits are recoverable.

Finally and importantly, it is not clear that this decision makes a difference to Mullins. Preliminarily, it is difficult to see how Mullins will lose any money because he cannot board the amounts paid by his health insurance.

Presumably, if that carrier has a claim, it is subrogated. In other words, the carrier might sue Mullins' no-fault carrier and the DIGA, but the court does not appreciate that the health carrier has any claim against Mullins or the tort-feasor.[4] Similarly, it seems unlikely that even if the DIGA gets involved, it has any lien on a judgement for Mullins.[5] Just as the no-fault law limits PIP claims against tort-feasors' insurance, it also protects injured motorists from liens by their PIP providers unless a double recovery is involved.

All of the above notwithstanding, this decision cannot immunize Mullins from a future claim for indemnification by his health insurer or the DIGA. The health insurer and the DIGA are not before the court. So, technically, they are not

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4 ***Int'l. Underwriters, Inc. v. Blue Cross & Blue Shield of Del., Inc.*, Del. Supr., 449 A.2d 197, 200 (1982).**

5 ***See Gimmestad v. Gimmestad*, Minn. Ct. App., 451 N.W.2d 662 (1990); *McMichael v. Robertson*, Md. Ct. Spec. App., 549 A.2d 1157, 1161-1162 (1988); *Bullock v. Pariser,* Pa.Super., 457 A.2d 1287 (1983).**

yet bound by the outcome of Plaintiff's motion. The court does not expect to reschedule the trial, but Plaintiff has leave to take any steps necessary to assure himself that his recovery, if any, is not reduced by a lien.

For the foregoing reasons, Plaintiff's Motion in Limine is DENIED.

Judge

oc: Prothonotary - Civil Division