

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

ZILLAH A. FRAMPTON, )  
 )  
 Plaintiff, )  
 )  
 v. ) C.A. No. 03C-04-060-JRS  
 )  
 ALLSTATE INSURANCE COMPANY,) )  
 )  
 Defendant. )

**ORDER**

This 6<sup>th</sup> day of June, 2005, the Court having considered defendant, Allstate Insurance Company's ("Allstate"), motion to amend judgment pursuant to Delaware Superior Court Civil Rule 59(d), and plaintiff's response thereto, it appears to the Court that:

1. This action to recover benefits under plaintiff's personal injury protection ("PIP") policy with Allstate was tried to a jury on January 18 and 19, 2005. The plaintiff's PIP coverage with Allstate has limits of \$50,000. The jury was not told of these policy limits at trial. After considering the evidence, the jury returned a verdict of \$80,511.21. Allstate has now moved to amend that judgment to reflect its policy limits of \$50,000, and the approximately \$9,500 it has already paid to the plaintiff under the policy.

2. The plaintiff alleges that she is entitled to receive the entire amount of the jury's verdict because Allstate chose not to advise the jury of its policy limits. It

is undisputed, however, that plaintiff did not plead, nor present to the jury, any claim for extra contractual damages. Consequently, plaintiff's argument must be rejected. Although it certainly would have been preferable to advise the jury of the Allstate policy limits, the Court cannot conclude that the plaintiff is entitled to a verdict in excess of those policy limits when the only claim presented to the jury was a breach of contract claim.<sup>1</sup> Plaintiff did not plead or otherwise claim punitive damages, nor did she make an allegation of bad faith refusal to pay insurance benefits. Consequently, she cannot recover extra-contractual damages in this case. Judgment shall be entered in favor of the plaintiff for \$40,521.66 plus interest and costs as demanded in the complaint. This ruling does not preclude plaintiff from pursuing such damages in a separate cause of action if she is deemed otherwise entitled to do so.

**IT IS SO ORDERED.**

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Judge Joseph R. Slights, III

Original to Prothonotary

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<sup>1</sup>See *J.J. White, Inc. v. Metropolitan Merchandise Mart*, 107 A.2d 892 (Del. Super. 1954)(as a general rule, punitive damages are not permitted in breach of contract cases); *Casson v. Nationwide Ins. Co.*, 455 A.2d 361 (Del. Super. 1982)(a modern trend has developed to allow punitive damages in cases of egregious willful or malicious conduct).