IN THE SUPREME COURT OF THE STATE OF DELAWARE

MIGUEL SANCHEZ,	)	
	)	No. 186, 2005
Plaintiff Below,	)	
Appellant,	)	Court Below: Superior Court
	)	of the State of Delaware in
v.	)	and for New Castle County
	)	
AMERICAN INDEPENDENT	)	C.A. No. 03C-09-153
INSURANCE COMPANY,	)	
	)	
Defendant Below,	)	
Appellee.	)	

Submitted: September 7, 2005
Decided: October 17, 2005

Before **STEELE**, Chief Justice, **BERGER**, and **JACOBS**, Justices.

O R D E R

This 17th day of October, 2005, upon consideration of the briefs of the parties, it appears to the Court as follows:

(1) The plaintiff-below appellant, Miguel Sanchez, appeals from a Superior Court order entering summary judgment in favor of the defendant-below, American Independent Insurance Company. Sanchez was accidentally shot in the head while riding as a passenger in his mother's vehicle. Sanchez argues that the Superior Court erred in holding that he was not entitled to recover personal injury protection benefits through his mother's automobile insurance policy, issued by American Independent. Because Sanchez's injury did not arise out of the use of an

automobile, the Superior Court correctly held that the carrier could legally deny Sanchez's claim. We therefore affirm.

(2) On May 2, 2001, Sanchez was riding in the front passenger seat of a vehicle owned by his mother, Elaine DeJesus-Davila. Unbeknownst to Sanchez or his mother, two pedestrians, at a nearby intersection, were involved in an argument. As DeJesus-Davila drove through the intersection, one of the pedestrians fired a gun at the other. The bullet missed its intended target, and passed through the rear window of the vehicle, striking Sanchez in the head.

(3) The American Independent policy insuring DeJesus-Davila's vehicle included a provision for a maximum of $15,000 in no-fault PIP benefits. In September 2003, Sanchez filed an action in Superior Court, seeking PIP benefits from American Independent. American Independent denied coverage, contending that the policy did not apply to Sanchez's injuries because they did not arise out of the use of the motor vehicle. The parties filed cross-motions for summary judgment, and the Superior Court granted American Independent's motion and denied Sanchez's motion. Sanchez appeals from that order.

(4) On appeal, Sanchez contends that the Superior Court erroneously concluded that Sanchez was not entitled to PIP benefits under the insurance policy. This Court reviews *de novo* a decision granting summary judgment, to determine whether the record shows that there is no genuine issue of material fact and that the

moving party is entitled to judgment as a matter of law.[1] Here, the only issue on this appeal is whether American Independent properly denied Sanchez PIP benefits under the policy. This Court reviews the interpretation of language in contracts, including insurance contracts, *de novo*.[2]

(5) Under Delaware's no fault insurance statute, 21 Del. C. § 2118(a)(2), the owner of a motor vehicle is required to have insurance that covers medical expenses and lost earnings for persons injured in an automobile accident.[3] That coverage, referred to as "PIP" benefits, must be at least $15,000.[4] The policy at issue in this case provided:

> [American Independent] will pay … personal injury protection benefits to or for an "insured" who sustains "bodily injury." The bodily injury must:
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> 1. Be caused by an accident; and
> 2. Arise out of the ownership, maintenance or use of a "motor vehicle" as a "motor vehicle."[5]

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1 *Emerald Partners v. Berlin*, 726 A.2d 1215, 1219 (Del. 1999).

2 *Twin City Fire Ins. Co. v. Del. Racing Assn.*, 840 A.2d 624, 626 (Del. 2003).

3 *Bass v. Horizon Assurance Co.*, 562 A2d 1194, 1195 (Del. 1989).

4 *21 Del. C. § 2118(a)(2)(b)*. Under the statute, the mandated coverage may be subject to conditions and exclusions customary to the field of liability, casualty and property insurance. *Id*. at Section 2118(f).

5 Although Sanchez raises in his opening brief the issue of whether he was an "occupant" of the vehicle (and therefore an insured) and whether the shooting was an "accident," American Independent does not appear to dispute those issues. Rather, American Independent argues that, regardless of whether Sanchez was an "insured" injured in an "accident," he was not entitled to coverage because the injuries had no causal connection to the use of the vehicle, as required by the terms of the policy.

(6) American Independent contends that Sanchez is not entitled to coverage under that provision because his injuries did not "arise out of the ownership, maintenance or use" of a motor vehicle. The Superior Court agreed with American Independent after applying the test articulated by this Court in *Nationwide General Insurance Co. v. Royal*.[6]

(7) In *Royal*, this Court adopted a three-part test to determine whether an injury has arisen out of the operation, use, or maintenance of a motor vehicle. That test, which was initially articulated by the Minnesota Supreme Court, considers:

> (a) whether the vehicle was an "active accessory" in causing the injury – i.e. "something less than proximate cause in the tort sense and something more than the vehicle being the mere situs of the injury;"
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> (b) whether there was an act of independent significance that broke the causal link between use of the vehicle and the injuries inflicted; and
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> (c) whether the vehicle was used for transportation purposes.[7]

(8) Sanchez argues that *Royal* is not applicable here, because this case involves an application for PIP benefits, rather than for the uninsured motorist benefits that the plaintiff in *Royal* was seeking. That is a distinction without a difference. The *Royal* test was developed "as a standard by which the courts of this State should determine whether an injury has arisen out of the operation, use,

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[6] 700 A.2d 130 (Del. 1997).

[7] *Id.* at 132.

or maintenance of a vehicle."[8] Both the no-fault insurance statute and the UIM statute provide coverage for injuries "arising out of" automobile accidents. Both the policy in this case, and the policy in Royal limited coverage to injuries "aris[ing] out of … the use" of the vehicle.[9] The General Assembly has never suggested and this Court has never held that one statute should be construed more broadly than the other, and for purposes of determining whether an injury arose from the "operation, maintenance, or use" of a vehicle, there is no principled reason to read one statute differently from the other.

(9) Under the Royal test, Sanchez's injuries did not arise out of the "use" of a motor vehicle because the vehicle was not an "active accessory" in causing the injury. Under the first prong of Royal, the vehicle must be something more than the mere situs of the injury. Although Sanchez was shot while he was sitting in the car, his location was the only connection between the injury and the vehicle. As the Superior Court judge pointed out, Sanchez could just have easily been walking or riding a bike through the intersection when he was shot. No one intentionally shot at or targeted the vehicle. Nothing about Sanchez's presence in the vehicle contributed to the fact that he was shot; unfortunately, he was merely in the wrong place at the wrong time.

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8 *Id.*

9 *Id.* at 131.

(10) Under factual circumstances very similar to this case, this Court in *Royal* held that the victim of a drive-by shooting was not entitled to collect UIM benefits. Although the owner of the car used in the shooting was underinsured, this Court held that the plaintiff was not entitled to collect UIM benefits from her insurer, because the vehicle was not a significant element in the events that led to the plaintiff's injuries.[10] As the *Royal Court* stated, "[the shooter] did not use the vehicle in order to catch up with or better position himself to shoot at Royal. He could have injured her just as easily without a vehicle by shooting at the trailer from the street or by walking up to or even into the trailer."[11]

(11) Because the issue of whether a vehicle was an "active accessory" is highly fact specific, the *Royal* Court noted that it is helpful to consider how other jurisdictions have resolved similar fact patterns.[12] In similar factual circumstances, other courts have found that the injuries did not arise out of the use of the motor vehicle. For example, in *Collier v. Employers Nat'l Insurance Co.*,[13] the Texas Court of Appeals held that the plaintiff was not entitled to UIM coverage when an unidentified assailant drove by and shot the plaintiff. The Court reasoned that the assault was not related to the ownership, maintenance or use of the assailant's

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10 *Id.* at 132.

11 *Id.* at 133.

12 *Id.*

13 861 S.W.2d 286 (Tex. App. 1993).

vehicle, because the same injury could have been suffered in the same way if the parties had been on foot or on bicycles. The Court declined to extend coverage to any circumstance where an automobile was merely the site of a criminal assault, without more. Similarly, in *Kreager v. State Farm Mutual Automobile Insurance Co.*,[14] the Michigan Court of Appeals held that the plaintiff was not entitled to PIP benefits when the plaintiff was standing in a parking lot and an assailant shot him while driving an automobile. The Court held that the injury did not arise from the "use of a motor vehicle as a motor vehicle," because the involvement of the car in the injury was not related to the car's character as a motor vehicle, but was merely incidental or fortuitous.[15] The Court reasoned that the shots could just as easily have been fired from a building or by a pedestrian.[16]

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[14] 496 N.W.2d 346 (Mich. App. 1992).

[15] *Id.* at 347.

[16] *Id.* at 348. Although Sanchez cites several cases that he argues support his position, all of them can be distinguished on their facts. For example, in *Smaul v. Irvington Gen. Hosp.*, 530A.2d 1251(N.J. 1987), the New Jersey Supreme Court awarded PIP benefits to a plaintiff who stopped the car to ask directions, and was assaulted by assailants who apparently wanted to steal the car. The plaintiff's injuries were connected to the vehicle in that case, because the assault stemmed from the assailant's desire to steal the car. *Id.* at 1253. Similarly, in *Pena v. Allstate Ins. Co.*, 463 So.2d 1256 (Fla. 1985) the Florida Supreme Court awarded PIP benefits to a taxicab driver who was assaulted and robbed of his fare money. The facts of that case are distinguishable because the assault was directly related to the taxi driver's use of the motor vehicle; he was assaulted because the assailant believed that the driver would be carrying money from his fares. Unlike those cases, the assault on Sanchez had nothing to do with his presence in the motor vehicle.

(12) Lastly, a finding of coverage is not warranted under the facts of this case, because there was no causal connection between Sanchez's use of the vehicle and his injuries.

NOW, THEREFORE, IT IS ORDERED that the judgment of the Superior Court is AFFIRMED.

BY THE COURT:

/s/ Myron T. Steele
Chief Justice