

**SUPERIOR COURT  
OF THE  
STATE OF DELAWARE**

**JOHN A. PARKINS, JR.**  
*JUDGE*

NEW CASTLE COUNTY COURTHOUSE  
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**Re: Rosalind Gardy v. Willie Hendrix and Ethel Blount  
C.A. No. 08C-04-103 JAP**

Submitted: November 16, 2009  
Decided: January 4, 2010

On Plaintiff's Motion for Summary Judgment  
**DENIED.**

Dear Counsel:

On April 18, 2006, Plaintiff Rosalind Gardy was in an automobile accident while driving her employer's Pennsylvania registered vehicle, which was insured under Pennsylvania law by Liberty Mutual. As a

consequence of the accident, Plaintiff allegedly incurred medical expenses totaling \$7,382.<sup>1</sup> On March 31, 2009, Liberty Mutual paid Plaintiff \$5,000, which was the maximum amount of PIP coverage available under her employer's Pennsylvania policy.

At the time of the accident, Plaintiff personally owned a vehicle which was registered and insured in Delaware. Plaintiff, however, never sought reimbursement of her expenses from her own PIP carrier. The statute of limitations for making such a claim has now expired.

Plaintiff now contends that “the \$5,000 in medical expenses paid pursuant to a collateral source, and which amount was not recoverable from her own carrier pursuant to a non-duplication of benefits clause, is boardable and recoverable from the tortfeasor in this case as a matter of law.”<sup>2</sup> The issue, therefore, is whether Plaintiff, having already received \$5,000 under the Pennsylvania policy, can now recover an additional \$5,000 from the defendant tortfeasors because she failed to make a claim under her Delaware policy.

Under 21 *Del. C.* § 2118(h), any “person eligible” for no-fault insurance special damage benefits, as those benefits are defined in §

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<sup>1</sup> Defendant asserts that Plaintiff suffered \$6,890. For purposes of this motion, the exact amount of her medical expenses is immaterial.

<sup>2</sup> Pl. Mot. for Summ. J., at 3.

2118(a)(2) and (3), is precluded from pleading or introducing evidence of special damages in an action against a tortfeasor whether or not such special damage benefits are actually recoverable. The key factor, therefore, in determining whether Plaintiff can claim her medical expenses in this case is whether or not she was a “person eligible.”

The Delaware Supreme Court has held that a “person eligible” under § 2118(h) is “any person within a class of persons to whom the statutorily required [no-fault insurance] extends.”<sup>3</sup> Under § 2118(a)(2)(d), coverage extends to named insureds of Delaware PIP policies who have accidents while operating non-Delaware registered vehicles.

Under the above definition, Plaintiff was a “person eligible” and therefore, cannot recover her remaining unpaid medical expenses from Defendants. Plaintiff argues that under her Delaware policy she is excluded from receiving “duplicate payments for the same elements of property damage or covered expenses under this policy . . . .”<sup>4</sup> She therefore contends that the \$5,000 she received from the Pennsylvania policy rendered her ineligible under the Delaware policy. However, Plaintiff did not even receive the \$5,000 until after statute of limitations had run on her Delaware

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<sup>3</sup> *Read v. Hoffecker*, 616 A.2d 835, 837 (Del. 1992) (quoting *Deel v. Rizak*, 474 F. Supp. 45, 46 (D. Del. 1979)).

<sup>4</sup> Pl. Mot. for Summ. J., at 2.

policy. Clearly then, according to Plaintiff's own argument, she was a "person eligible" during the PIP period and could have recovered from her Delaware carrier. Moreover, it would defy logic and the purpose of PIP to allow Plaintiff to recover from Defendants the amount of medical expenses she has already recovered.<sup>5</sup> Therefore, Plaintiff is not entitled to recover her outstanding medical expenses from Defendant. Accordingly, Plaintiff's motion for summary judgment is **DENIED**.

cc: Prothonotary

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<sup>5</sup> See *Gonzalez v. State Farm Mut. Auto. Ins. Co.*, 1996 WL 526014, at \*1 (Del. Supr.) (stating that "the statutory purpose of quick recovery of no-fault benefits is entirely consistent with the exclusion of double recovery").