Superior Court of the State of Delaware

William L. Witham, Jr. Resident Judge Kent County Courthouse 38 The Green Dover, Delaware 19901 Telephone (302) 739-5332

February 14, 2014

Jeffrey J. Clark, Esquire Schmittinger & Rodriguez, P.A. P.O. Box 497 Dover, Delaware 19903

Colin M. Shalk, Esquire Casarino Christman Shalk Ransom & Doss, P.A. P.O. Box 1276 Wilmington, Delaware 19899-1276

Re: James Spence v. Cheryl Czerny and State Farm Mutual Auto. Ins. C.A. No. K12C-03-029 WLW LETTER ORDER ON MOTIONS IN LIMINE

Dear Counsel:

The parties appeared in Chambers on February 11, 2014 for the scheduled Pretrial Conference in this case. Plaintiff and Defendant State Farm have each filed a motion *in limine*.

Plaintiff James Spence (hereinafter "Plaintiff") has filed the instant action to recover underinsured motorist benefits under his insurance policies with Defendant State Farm (hereinafter "State Farm"). Plaintiff has both underinsured motorist (hereinafter "UIM") and personal injury protection (hereinafter "PIP") policies with State Farm.

On April 28, 2010, Plaintiff was working as a road construction flagger when he was struck by a vehicle driven by Defendant Cheryl Czerny (hereinafter

Spence v. Czerny and State Farm Mutual Auto. Ins. C.A. No. K12C-03-029 WLW Page 2

"Czerny"). Plaintiff received workers compensation benefits from his employer following the accident. Plaintiff has reached a settlement agreement with Czerny's insurance carrier for Czerny's PIP policy limits of \$15,000. Czerny is no longer a party to this action.

On January 21, 2014, Plaintiff filed a motion *in limine* to exclude any reference regarding Plaintiff's workers compensation claims pertaining to the injury at issue. State Farm responds that while State Farm agrees that no reference should be made to workers compensation benefits received by Plaintiff, the jury should still receive a jury instruction pursuant to Civil Pattern Jury Instruction 22.22. This pattern instruction advises the jury that the plaintiff cannot recover losses or expenses that have been paid as part of no-fault benefits.¹

Also on January 21, 2014, State Farm filed its own motion *in limine* seeking to exclude: (1) all medical bills and lost wages for which PIP benefits were available to Plaintiff, and (2) all evidence of Plaintiff's workers compensation lien. Plaintiff responds that he has no intention of seeking any expenses that were incurred within the two-year PIP claim period, and contends that all of the special damages and medical expenses being sought were incurred after the two-year PIP period. Plaintiff also agrees that the workers compensation lien cannot be referenced. However, Plaintiff contends that a jury instruction informing the jurors that Plaintiff has already received compensation relating to the accident violates the collateral source rule.

PIP eligible expenses

Section 2118(h) of title 21 of the Delaware Code provides:

[a]ny person eligible for [PIP eligible] benefits. . .is precluded from pleading or introducing into evidence in an action for damages against a tortfeasor those damages for which compensation is available. . .without regard to any elective reductions in such coverage and whether or not such benefits are

¹ Del. P.J.I. Civ. § 22.22 (2006).

Spence v. Czerny and State Farm Mutual Auto. Ins. C.A. No. K12C-03-029 WLW Page 3

actually recoverable.²

This provision precludes a plaintiff from recovering PIP eligible benefits regardless of whether Plaintiff has insurance available or whether the carrier can pay.³ So long as the plaintiff is within "the class legally obligated to obtain PIP coverage," the preclusion statute applies.⁴

Plaintiff does not contest that § 2118(h) precludes him from recovering any PIP eligible expenses, including medical expenses and wages. However, Plaintiff contends that he is not seeking recovery of any expenses incurred during the two-year PIP period from April 28, 2010 (the date of the accident) through April 28, 2012. All of the lost wages and past medical expenses Plaintiff seeks were incurred from April 28, 2012 through September 16, 2013. This includes \$40,037.76 in lost wages and \$52,446.66 in past medical expenses. Because these expenses would not qualify as PIP eligible expenses, the preclusion statute would not prevent Plaintiff from recovering them.

Based on the foregoing, Plaintiff should be allowed to recover those expenses and lost wages that were incurred after April 28, 2012; *i.e.*, more than two years after the date of the accident. Pursuant to § 2118(h), Plaintiff is prohibited from recovering any expenses incurred within two years from the date of the accident. Accordingly, State Farm's motion *in limine* as to PIP eligible benefits is **GRANTED**.

Collateral source rule

As a general proposition, the collateral source rule precludes a defendant from introducing any evidence of the plaintiff's receipt of benefits from a source independent of the defendant.⁵ The collateral source rule has been applied in the

² 21 Del. C. § 2118(h).

³ Mullins v. Klase, 2001 WL 1198946, at *1 (Del. Super. Sept. 28, 2001).

⁴ *Id*.

 $^{^5}$ See Yarrington v. Thornburg, 205 A.2d 1, 2 (Del. 1964).

Spence v. Czerny and State Farm Mutual Auto. Ins. C.A. No. K12C-03-029 WLW Page 4

context of an action to recover UIM benefits to preclude insurer-defendants from introducing any evidence of the plaintiff's workers compensation benefits.⁶

The collateral source rule as been applied in the same exact context as the case before the Court to prohibit any reference whatsoever to the Plaintiff's receipt of workers compensation benefits. The parties do not dispute that Plaintiff is prohibited from making any reference to any workers compensation benefits he has received, and from referencing any claims he has filed for workers compensation

Accordingly, both parties' motions as to any reference to Plaintiff's workers compensation claim or benefits is **GRANTED**.

Plaintiff also relies on the collateral source rule to challenge State Farm's suggestion that Pattern Instruction 22.22 be issued to the jury. Pattern Instruction 22.22 merely informs the jury that the Plaintiff cannot recover any expenses that he has already received insurance payments for within two years from the date of the accident. This Pattern Instruction is consistent with the collateral source rule, § 2118(h) and the Court's ruling *supra* that Plaintiff cannot recover any PIP eligible expenses incurred within two years from the accident on April 28, 2010. Accordingly, the Court rejects Plaintiff's argument that Pattern Instruction 22.22 is not permitted under the collateral source rule.

WHEREFORE, State Farm's motion *in limine* as to PIP eligible expenses is **GRANTED**. Plaintiff's motion *in limine* as to workers compensation benefits is **GRANTED**.

IT IS SO ORDERED.

/s/ William L. Witham, Jr.
Resident Judge

WLW/dmh

⁶ See Miller v. State Farm Mut. Auto. Ins. Co., 993 A.2d 1049, 1053 (Del. 2010).