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

KEVERN I. PHILLIPS,	)	
	)	
Plaintiff,	)	
v.	)	
	)	
CARLOS CASTILLO OCASIO,	)	C.A. No. N13C-05-309 MMJ
	)	
Defendant.	)	
	)	

Submitted: March 27, 2014
Decided: April 9, 2014

On Plaintiff's Motion for the Entry of Partial Summary Judgment
GRANTED

MEMORANDUM OPINION

Matthew M. Bartkowski, Esquire, Kimmel, Carter, Roman & Peltz, P.A., Attorney for Plaintiff

Ronald W. Hartnett Jr., Esquire, Chrissinger & Baumberger, Attorney for Defendant

JOHNSTON, J.

This action arises out of an automobile accident. Plaintiff did not have insurance as required by 21 *Del. C.* § 2118.

In answer to the complaint, Defendant asserted several affirmative defenses and a counterclaim. The Counterclaim contends that Plaintiff was negligent for failing to insure the vehicle. Affirmative Defense Seventeen alleges that Plaintiff was negligent for failing to have insurance as required by statute. Affirmative Defense Eighteen asserts that Plaintiff waived the right to claim special damages because Plaintiff operated the vehicle without insurance.

Plaintiff has moved for partial summary judgment on Affirmative Defenses Seventeen and Eighteen and the Counterclaim.

SUMMARY JUDGMENT STANDARD

Summary judgment is granted only if the moving party establishes that there are no genuine issues of material fact in dispute and judgment may be granted as a matter of law.[1] All facts are viewed in a light most favorable to the non-moving party.[2] Summary judgment may not be granted if the record indicates that a material fact is in dispute, or if there is a need to clarify the application of law to the specific circumstances.[3] When the facts permit a reasonable person to draw only

[1] Super. Ct. Civ. R. 56(c).

[2] *Hammond v. Colt Indus. Operating Corp*., 565 A.2d 558, 560 (Del. Super. 1989).

[3] Super. Ct. Civ. R. 56(c).

one inference, the question becomes one for decision as a matter of law.[4] If the non-moving party bears the burden of proof at trial, yet "fails to make a showing sufficient to establish the existence of an element essential to that party's case," then summary judgment may be granted against that party.[5]

ANALYSIS

Plaintiff argues that it is well-settled that an uninsured plaintiff may seek and recover damages otherwise precluded by 21 *Del. C.* § 2118(h).

Section 2118(h) provides:

> Any person eligible for benefits described in paragraph (a)(2) or (3) of this section, other than an insurer in an action brought pursuant to subsection (g) of this section, is precluded from pleading or introducing into evidence in an action for damages against a tortfeasor those damages for which compensation is available under paragraph (a)(2) or (3) of this section without regard to any elective reductions in such coverage and whether or not such benefits are actually recoverable.

In *Redding v. Ortega*,[6] the Delaware Supreme Court held:

> Under the circumstances of this case, an application of the evidentiary restriction in section 2118(h) would result in punishment for innocent plaintiffs who cannot recover under a Delaware no-fault automobile policy and in a windfall for an otherwise liable tortfeasor. Neither of those results is consistent with the statutory framework enacted by the General Assembly. First, the penalties for not having

[4] *Wootten v. Kiger*, 226 A.2d 238, 239 (Del. 1967).

[5] *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986).

[6] 840 A.2d 1224 (Del. 2003).

> statutorily-mandated insurance are specific and do not include forfeiting the right to recover monetary damages from a tortfeasor. Second, the no-fault statute does not provide protection for a tortfeasor when the mandatory no-fault coverage is extant. Accordingly, we hold that section 2118(h)'s evidentiary restriction does not apply in actions against tortfeasors by plaintiffs who are not eligible for benefits under a statutorily required Delaware automobile policy.[7]

In *Zeglin v. Hayden*,[8] this Court found that the admission of "special" damages—such as lost wages and medical expenses—is permitted where a plaintiff is uninsured. The fact of lack of insurance is irrelevant.[9] Evidence of failure to insure would be outweighed by the danger of unfair prejudice to the plaintiff. "A jury could easily 'punish' such a plaintiff, overlooking his injuries and damages. The punishment for failure to carry insurance is confined to the statute."[10]

Defendant's Affirmative Defenses and Counterclaim assert that Defendant is not liable for medical and wage expenses because Plaintiff was uninsured. Defendant argues that because Plaintiff knowingly and negligently drove the vehicle without insurance coverage, Plaintiff should be considered self-insured under Section 2118. Defendant concedes, however, that Plaintiff is not "self-insured" as

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[7] *Id.* at 1228.

[8] 1995 Del. Super. LEXIS 238, at **12-13; *see also Santana v. Korup*, 1978 WL 181864, at *1 (Del. Super. 1978).

[9] 1995 Del. Super. LEXIS 238, at *12.

[10] *Id*. at *13 (referring to 21 *Del. C.* § 2118(s)(1)).

defined by 21 *Del. C.* § 2904(a).[11] Thus, contends Defendant, Plaintiff should not be permitted to present his personal injury protection-eligible ("PIP") medical bills and lost wages to the jury. Instead, Plaintiff should be required to pursue a subrogation action against the tortfeaser's insurance carrier, in the same manner as a PIP carrier.

Defendant has conceded that this argument presents a "novel concept."

The Court finds that Plaintiff's Motion is controlled by well-settled Delaware law. The cases relied upon are not distinguishable from this case in any meaningful manner for purposes of the pending motion. An uninsured plaintiff cannot be deemed self-insured, and thus be prevented from seeking medical expenses and lost wages directly from the tortfeaser. There is no policy justification for limiting an uninsured plaintiff to the remedy of subrogation in order to recover those special damages. In short, an uninsured plaintiff does not stand in the shoes of a PIP carrier. The evidentiary limitations set forth in 21 *Del. C.* § 2118(h) do not apply to an uninsured plaintiff. By definition, an uninsured plaintiff is not "eligible for benefits," under 21 *Del. C.* §§ 2118(a)(2) or (3).

[11] "Upon condition of providing the same benefits available under a required vehicle insurance policy, any person in whose name more than 15 motor vehicles are registered in this State may qualify as a self-insurer by obtaining a certificate of self-insurance issued by the Secretary of Transportation as provided in subsection (b) of this section."

CONCLUSION

THEREFORE, Plaintiff's Motion for the Entry of Partial Summary Judgment is hereby **GRANTED. Affirmative Defenses Seventeen and Eighteen and Defendant's Counterclaim are hereby DISMISSED.**

IT IS SO ORDERED.

/s/ Mary M. Johnston
The Honorable Mary M. Johnston