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SUPERIOR COURT OF NEW JERSEY
HUDSON COUNTY
LAW DIVISION, CIVIL PART
Docket No. L-2772-16

RUSSELL LEDET

Plaintiff

v.

ELISIO OLLER, MYRIAM DEJESUS and JOHN DOES 1-X (the names fictitious and unknown)

Defendants

Decided: August 28, 2017

Adam Springer, attorney for plaintiff (Krivitzky, Springer & Feldman)

Richard Giannone, attorney for defendants (Cooper Maren Nitsberg Voss & DeCoursey).

Daniel D'Alessandro, J.S.C.

INTRODUCTION

The plaintiff "principally garaged" his motor vehicle in New Jersey while he lived in Jersey City and attended graduate school in New York City. He insured and registered the vehicle in his home state of Louisiana. The novel issue before the court is whether the plaintiff is

"culpably uninsured" if his Louisiana carrier provided full coverage under New Jersey law.

PARTIES

Russell Ledet is the plaintiff ("Ledet" or "plaintiff'). Miriam DeJesus ("DeJesus") and Eliseo Oller ("Oller") are the defendants.

FACTS

On July 13, 2014, plaintiff was in a car accident while operating his 2006 Volvo S40. Oller was driving DeJesus' vehicle. Oller struck plaintiff's vehicle from behind after plaintiff stopped at a red light.

Plaintiff resides in New Jersey. Louisiana is his domicile. He purchased a home there in 2009. In May 2013, he temporarily moved from Louisiana to Jersey City, with his wife and their now six-year-old daughter, to pursue his PhD at New York University (NYU). They will return to Louisiana for plaintiff to attend Tulane Medical School after his anticipated NYU graduation in 2018. [1]

[1] Defendant objected to plaintiff-attorney's certification as hearsay. See, Rule 1:6-6, Evidence on Motions, and Estate of Kennedy v. Rosenblatt, 447 N.J. Super. 444 (App. Div. 2016). The certification is not hearsay. The court infers that defendant meant the statement of disputed material facts (without citation to the record) in plaintiff's brief. Defendant filed part of plaintiff's deposition transcript. Neither party filed plaintiff's answers to interrogatories. The parties agree that there are no disputed material facts. The motion record does not indicate if plaintiff's wife was deposed. She is not a plaintiff. Defendant argues that those statements are not material because the issue is not one of residency versus domicile. The initial discovery end date

Plaintiff enlisted in the United States Navy in 2004 upon his high school graduation. After active duty, he joined the Navy Reserves. He was in the reserves until November 14, 2013.

Plaintiff registered his vehicle in Louisiana and insured it with a USAA Louisiana policy. USAA specializes in coverage for past and present members of the United States military. Plaintiff has a New Jersey driver's license. Plaintiff testified at deposition that his wife did not obtain a New Jersey license because "she was still traveling back and forth between NJ and LA." The police report states that he resides in New Jersey. The parties agree that that the report incorrectly identifies Louisiana as his vehicle's state of registration.

The renewal declarations for USAA policy 02070 04 75G 7107 5 confirm that USAA issued a Louisiana policy to "Russell Joseph Ledet, PO1 USN, 273 Columbia Avenue, Apartment 1, Jersey City, NJ." It names plaintiff and his wife, Mallory A. Brown-Ledet, as insured operators of the 2006 Volvo. The policy was in effect on the accident date.

Plaintiff testified without contradiction at deposition that he told USAA that he was living in New

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is September 4, 2017. Accordingly, after an independent review of the record, the court accepts those statements as true for this motion.

Jersey while attending school; and that USAA advised him that he was insured while residing in New Jersey. The policy declarations include his New Jersey address and state that his vehicle is principally garaged in Louisiana.

After the July 12, 2014 accident, USAA provided plaintiff with PIP coverage of up to $250,000 in PIP benefits subject to 20% co-pays and a $250 deductible. The minimum required PIP coverage under N.J.S.A. 39:6A-4 is $15,000.00. Although plaintiff's medical bills exceeded the $5,000 medical expense limit on his Louisiana policy, USAA voluntarily paid $15,699.61 in PIP benefits.

Defendants contend that plaintiff is "culpably uninsured." They filed a summary judgment motion to bar plaintiff's economic and non-economic losses pursuant to N.J.S.A. 39:6A-4.5(a).

STANDARD OF REVIEW

> The summary judgment rule set forth in Rule 4:46-2 "serve[s] two competing jurisprudential philosophies": first, "the desire to afford every litigant who has a bona fide cause of action or defense the opportunity to fully expose his case," and second, to guard "against groundless claims and frivolous defenses," thus saving the resources of the parties and the court.

Globe Motor Co. v. Igdalev, 225 N.J. 469, 479 (2016) (quoting Brill v. Guardian Life Ins. Co. of Am., 142 N.J. 520, 541-42 (1995).

Summary judgment is appropriate when "the pleadings, depositions, answers to interrogatories and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact challenged and that the moving party is entitled to a judgment or order as a matter of law." Brill, supra, 142 N.J. at 528-29 (citation omitted).

This court strictly adhered to the standard of review. The court completed "a[n] [independent and thorough] discriminating search" of the record to determine if there are any genuine disputes of material fact to decide if movant is entitled to summary judgment. See Millison v. E.I. Du Pont Nemours & Co., 101 N.J. 161, 167 (1985).

DISCUSSION

N.J.S.A. 39:6A-4.5(a) requires that:

> Any person who, at the time of an automobile accident resulting in injuries to the person, is required but fails to maintain medical expense benefits coverage mandated by [N.J.S.A. 39:6A-4] shall have no cause of action for recovery of economic or noneconomic loss sustained as a result of an accident **while operating an uninsured automobile**.
>
> (emphasis added).

The statute advances a cost containment policy by ensuring that an injured, uninsured driver does not draw on the pool of accident-victim insurance funds to which he did not contribute. Caviglia v. Royal Tours of America, 178 N.J. 460, 471 (2004). It gives the uninsured driver a powerful incentive to comply with the compulsory insurance laws - obtain automobile insurance coverage or lose the right to sue for economic and non-economic injuries. Ibid.

Defendant argues that plaintiff cannot recover economic and non-economic losses because he failed to comply with N.J.S.A. 39:6A-4.5(a). The statute does not require scienter or a "culpable state of mind". Plaintiff is responsible to know the content of his insurance policy declarations. The declarations clearly state that it is a Louisiana policy with only $5,000 in medical expense coverage and that the rate was based upon the vehicle being principally garaged in Louisiana. USAA did not attempt to cancel, rescind or reform its policy. USAA voluntarily paid benefits beyond New Jersey's $15,000 mandatory minimum.

Plaintiff contends that he was not operating an uninsured vehicle because he insured it under the USAA Louisiana policy. Neither N.J.S.A. 39:6A-4.5(a) nor N.J.S.A. 39:6A-4 states that the owner must have a New Jersey policy. N.J.S.A. 39:6A-4.5(a) mandates insurance

coverage. N.J.S.A. 39:6A-4.5(a) does not mandate coverage under a New Jersey policy.

Plaintiff testified without contradiction during his deposition that "so actually, with USAA, I had never had to get my insurance registered outside of I think Louisiana and maybe Florida, because I was there for an extended period of time. But generally, I just clearly informed USAA that this is where I was, this is where I would be. I was still in the military at the time when we moved here, and they told me that I would be covered and everything would be okay." Ledet Dep. 12:3 – 13.

The term "uninsured motor vehicle" is not defined in N.J.S.A. 39:6A-2. It is defined in N.J.S.A. 17:28-1.1(2)(a) as "one for which there is no bodily injury liability insurance or bond applicable at the time of the accident". On the accident date, plaintiff had automobile liability insurance through USAA.

Under the Deemer Statute, N.J.S.A. 17:28-1.4, his policy applied to this accident. Plaintiff's policy states:

> If an auto accident to which this policy applies occurs in any state or province other than the one in which your covered auto is principally garaged, your policy will provide at least the minimum amounts and types of coverages required by law…

Pl. Ins. policy, p. 6.

The term "principally garaged" is not defined in the statute. The term means "the physical location where an automobile is primarily or chiefly kept or where it is kept most of the time." Chalef v, Ryerson, 277 N.J.Super. 22, 27 (App. Div. 1994).

N.J.S.A. 39:6A-4 requires a policy of insurance approved by the [New Jersey] Commissioner of Banking and Insurance. Plaintiff argues that defendant's argument ignores the "Deemer Statute," N.J.S.A. 17:28-1.4,

> Any insurer authorized to transact or transacting automobile or motor vehicle insurance business in this State, or controlling or controlled by, or under common control by, or with, **an insurer authorized to transact or transacting insurance business in this State**, which sells a policy providing automobile or motor vehicle liability insurance coverage, or any similar coverage, **in any other state** or in any province of Canada, **shall include in each policy coverage to satisfy at least the personal injury protection benefits coverage** pursuant to section 4 of P.L.1972, c.70 (C.39:6A-4) or section 19 of P.L.1983, c.362 (C.17:28-1.3) for any New Jersey resident who is not required to maintain personal injury protection coverage pursuant to section 4 of P.L.1972, c.70 (C.39:6A-4) or

section 4 of P.L.1998, c.21 (C.39:6A-3.1) and who is not otherwise eligible for such benefits, whenever the automobile or motor vehicle insured under the policy is used or operated in this State. In addition, **any insurer authorized to transact or transacting automobile or motor vehicle insurance business in this State**, or controlling or controlled by, or under common control by, or with, an insurer authorized to transact or transacting automobile or motor vehicle insurance business in this State, **which sells a policy providing automobile or motor vehicle liability insurance coverage, or any similar coverage, in any other state or in any province of Canada, shall include in each policy coverage to satisfy at least the liability insurance requirements** of subsection a. of section 1 of P.L.1972, c.197 (C.39:6B-1) or section 3 of P.L.1972, c.70 (C.39:6A-3), the uninsured motorist insurance requirements of subsection a. of section 2 of P.L.1968, c.385 (C.17:28-1.1), **and personal injury protection benefits coverage** pursuant to section 4 of P.L.1972, c.70 (C.39:6A-4) or of section 19 of P.L.1983, c.362 (C.17:28-1.3**), whenever the automobile or motor vehicle insured under the policy is used or operated in this State.**

Any liability insurance policy subject to this section shall be construed as providing the coverage required herein, and any named insured, and any

> immediate family member as defined in section 14.1 of P.L.1983, c.362 (C.39:6A-8.1), under that policy, shall be subject to the tort option specified in subsection a. of section 8 of P.L.1972, c.70 (C.39:6A-8).
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> **Each insurer authorized to transact or transacting automobile or motor vehicle insurance business in this State and subject to the provisions of this section shall file and maintain with the Department of Banking and Insurance written certification of compliance with the provisions of this section.**
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> (emphasis added).

USAA is authorized to do business in New Jersey. Plaintiff's USAA policy included out of state coverage. The policy explicitly states that coverage will be provided in the minimum amounts of the state in which the accident occurred. USAA is required to provide coverage that meets all New Jersey minimum mandatory requirements for any vehicles it insures in another state. USAA provided that coverage. New Jersey requires a minimum of $15,000.00 in PIP benefits. USAA paid $15,699.61 in PIP benefits.[2] Accordingly, plaintiff concludes that his claims are not barred under N.J.S.A. 39:6A-4.5(a) because his vehicle was

[2] Plaintiff does not know if he paid a surcharge for the stepped-up PIP coverage

insured. The reported decisions[3] under N.J.S.A. 39:6A-4.5 are distinguishable and do not bar plaintiff's claims.

In Caviglia v. Royal Tours of America, supra, 178 N.J. at 474, the Supreme Court upheld the bar of plaintiff's injury claims because she owned an uninsured vehicle. Ledet's vehicle was insured on the date of the accident.

Defendant argues that Caviglia is distinguishable. In finding the statute constitutional, the New Jersey Supreme Court observed that:

> …the arithmetic of this State's automobile liability insurance scheme is not difficult to compute. When fewer motorists purchase automobile insurance and more uninsured motorists receive payment on their claims for personal injuries, those who obey our compulsory insurance laws pay higher premiums. The Legislature may do more than ponder powerlessly such an inequitable equation. The Legislature may act to give motorists incentives to purchase insurance so that a greater pool of insurance proceeds will be available for all accident victims. Alternatively, it may bar the claims of those who fail to contribute to the system by obtaining insurance.
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> Id. at 678.

[3] The parties also exchanged and filed unreported decisions and an appellate brief in a settled case for the court's consideration. See, Rule 1:36-3.

Defendant argues that New Jersey's statutory scheme and policy objectives make plaintiff more culpable than an uninsured claimant because USAA voluntarily provided additional coverage. Plaintiff did not contribute to or draw from the New Jersey insurance system. The record is silent as to any prejudice to the insurance system.

Nothing in the record suggests that the Legislature intended that college students or military members temporarily living in New Jersey are required to register their vehicles in New Jersey while on military duty or while attending school.

In Martin v. Chhabra, 374 N.J. Super. 387 (App. Div. 2005), the Appellate Division considered a motion to dismiss a plaintiff's complaint for personal injuries. It was uncontested that Martin owned and registered a vehicle principally garaged in New Jersey. He did not have insurance. The insurance was in his girlfriend's name. The defendant argued for dismissal under N.J.S.A. 39:6A-4.5. The Court held:

> As the owner of the vehicle, plaintiff did not maintain medical expense benefits or any other insurance coverage for the automobile. Instead, he relied upon his girlfriend to insure and maintain the proper insurance coverages on the vehicle. Indeed, **if the vehicle had been uninsured at the**

> **time of his accident, plaintiff would have been totally precluded from pressing any "cause of action for recovery of economic or noneconomic loss."** *N.J.S.A.* 39:6A-4.5.
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> **But, the vehicle in which plaintiff allegedly suffered his economic and noneconomic loss was not uninsured at the time of the accident.** Luckily for plaintiff, his girlfriend had maintained insurance on the vehicle. Nevertheless, because plaintiff as the owner did not maintain medical expense coverage, *N.J.S.A.* 39:6A-8 applies the verbal threshold to him.
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> Id. at 391. (emphasis added).

Ledet's vehicle was not uninsured. USAA provided the requisite medical expense benefits.

Finally, in Dziuba v. Fletcher, 382 N.J. Super. 73 (App. Div. 2005), plaintiffs owned three uninsured motor vehicles in New Jersey. The accident occurred while they were in another vehicle. The Court barred plaintiffs from receiving PIP benefits from the host vehicle but did not bar their injury claims against the tortfeasor.

Under Dziuba, a New Jersey resident who owns an insured vehicle can sue a defendant for damages, if he is not in his uninsured vehicle when the accident occurs.

This court concludes that the plaintiff can seek economic and non-economic losses. The plaintiff was operating an insured motor vehicle. N.J.S.A. 39:6A-4.5(a)

does not require a New Jersey policy. In his brief and during oral argument, plaintiff stipulated that he is subject to the verbal threshold if his claim is not barred.

In Chalef v. Ryerson, supra, 277 N.J.Super. at 22, the Appellate Division held that plaintiff's vehicle was principally garaged in New Jersey and insured under a Maryland policy. The Court held that since plaintiff did not have a New Jersey policy and because her vehicle was principally garaged in New Jersey, she was subject to the verbal threshold. The Court reasoned:

> In any event, our Legislature has clearly chosen to require out-of-state residents who "principally garage" their automobiles in New Jersey and who fail to maintain the minimum PIP coverage required by N.J.S.A. 39:6A-4 to satisfy the more restrictive verbal threshold requirements of N.J.S.A. 39:6A-8(a). *See* N.J.S.A. 39:6A-4.5; *cf.* N.J.S.A. 39:6A-7(b) (1). Plaintiff used and primarily kept her automobile in this state at the time of the accident and failed to insure that automobile pursuant to New Jersey law. Plaintiff, therefore, is subject to the more restrictive verbal threshold requirements in pursuing her claim for noneconomic loss.
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> Id. at 31.

Similarly, Ledet's vehicle, was principally garaged in New Jersey, and insured under a Louisiana policy. Accordingly, plaintiff is subject to the verbal threshold.

CONCLUSION

The motion for summary judgment is denied. Plaintiff was not "culpably uninsured" on the date of the accident.