

**FILED**

NOV 16 2009

RICHARD J. DONOHUE  
J.S.C.

NOT TO BE PUBLISHED WITHOUT  
THE APPROVAL OF THE COMMITTEE ON OPINIONS

METLIFE AUTO & HOME and METLIFE  
AUTO & HOME AS SUBROGEE OF JULIANA  
MICHA,

Plaintiff(s),

vs.

EDWIN MALDONADO, R+L TRANSFER, INC.  
a/k/a R+L CARRIERS, INC., PROTECTIVE  
INSURANCE COMPANY, and ABC  
CORPORATION(S) (fictitious corporations  
whose names are not known),

Defendant(s),

SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION : BERGEN COUNTY  
DOCKET NO. BER-L-6589-08

OPINION

Argued: November 11, 2009  
Decided: November 16, 2009

Honorable Richard J. Donohue, J.S.C.

Noah Gradofsky, Esq. (Law Offices of Jan Meyer & Assocites, P.C.) appearing on behalf of plaintiff, MetLife Auto & Home and MetLife Auto & Home as subrogee of Juliana Micha

Mary Teresa Soltis, Esq. (Cozen O'Connor) appearing on behalf of defendants, Edwin Maldonado, R+L Transfer, Inc. a/k/a R+L Carriers, Inc. and Protective Insurance Company

On September 14, 2009, this court entered an order compelling plaintiff, MetLife Auto & Home ("MetLife"), and defendant, Protective Insurance Company ("Protective"), to proceed to arbitration. MetLife and Protective have requested clarification of the September 14, 2009 order and the accompanying rider. The September 14, 2009 order compels Protective to sign a letter of consent to permit MetLife to file an arbitration application; a rider is attached stating that N.J.S.A. 39:6A-9.1 does not apply when the tortfeasor maintains PIP coverage.

This case arose on August 30, 2006, when plaintiff's insured, Juliana Micha, was allegedly injured after her automobile collided with a Mack truck being operated by defendant,

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Edwin Maldonado, in his capacity as an employee of defendant, R+L Transfer, Inc. According to plaintiff's moving papers, Micha incurred \$52,682.44 in medical bills for which MetLife paid out in the form of PIP benefits. MetLife filed this action individually and as Micha's assignee on August 29, 2009 against alleged tortfeasors, Maldonado and R+L Transfer, Inc., as well as Protective, in order to receive reimbursement for the PIP payments. In its complaint, MetLife alleges that Protective is liable to MetLife for reimbursement, because R+L Transfer, Inc. is not required to maintain PIP benefits under N.J.S.A. 39:6A-9.1 (2003). Protective has alleged in its answer that because it did actually carry the PIP benefits, it qualifies as a PIP carrier and is considered exempt under the same statute. N.J.S.A. 39:6A-9.1 "permits reimbursement of PIP benefits to an insurer only where the tortfeasor (or its carrier) either was *not required* to carry PIP coverage, or, although required, failed to do so." Liberty Mutual Ins. Co. v. Thomson, 385 N.J.Super. 240, 246 (App. Div. 2006) (emphasis added). In that vein, if both insurers are PIP carriers, the tortfeasor's insurer is insulated from recovery under this statute.

The fact that commercial vehicles are not statutorily required to maintain PIP coverage is well-settled. Empire Fire & Marine v. GSA, 354 N.J.Super. 415, 417 (App. Div. 2002); *see also* N.J.S.A. 39:6A-4 (excluding commercial vehicles from the definition of "automobile"). The issue before the court, as articulated by Empire, but not expressly decided, is "whether voluntary PIP coverage on a commercial vehicle would preclude a private vehicle carrier's reimbursement rights . . . ." Empire, 354 N.J.Super. at 420, n.2 (App. Div. 2002).

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MetLife filed this motion to compel arbitration on July 29, 2009.<sup>1</sup> In its moving papers, MetLife sets forth its main argument that because R+L Transfer, Inc. is not required by statute to carry PIP insurance, MetLife has a direct right of recovery under N.J.S.A. 39:6A-4. Protective's opposition states that because R+L Transfer, Inc. has voluntarily maintained a PIP policy for \$15,000.00, Protective is an exempt PIP insurer under the statute.<sup>2</sup> Protective cites Liberty Mut. Ins. Co. v. Thomson, 385 N.J.Super. 240 (App.Div. 2006) in support of its proposition that a commercial vehicle owner that has maintained PIP coverage is not liable for PIP benefits paid by another insurer. However, Thomson involved a car rental company that was required by law to maintain PIP coverage for its vehicles; thus the exemption from the statute. Protective also cites Liberty Mut. Ins. Co. v. Selective Ins. Co., 271 N.J.Super. 569 (Law Div. 1993) for its holding that "an insured commercial tortfeasor cannot be sued for PIP reimbursement . . ." Id. at 573. This holding, while technically correct, speaks to the personal liability of a commercial tortfeasor, rather than the liability of its insurer. Id.

MetLife counters that even if a voluntarily-held PIP policy insulates a commercial tortfeasor's insurer from liability, the current facts do not meet that scenario. MetLife cites to the language in Protective's policy limiting PIP coverage to incidents "arising out of the [use] of a private passenger auto . . ." (Def. Opp. Exhibit A) (emphasis in original). Because this

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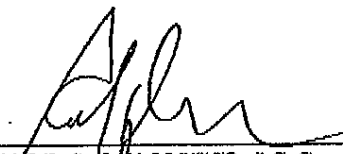
<sup>1</sup> N.J.S.A. 39:6A-9.1 directs all PIP recovery disputes between insurers to proceed to arbitration unless they can reach an agreement on the amount of recovery.

<sup>2</sup> Attached as Exhibit A to Protective's opposition is a copy of the insurance policy held by R+L Transfer, Inc., including the PIP coverage information. The language of the policy states, "[y]our commercial auto coverage form (or policy) covers [PIP] benefits for bodily injury sustained by an eligible injured person . . . caused by an accident . . . arising out of the [use] of a private passenger auto as an auto." (emphasis in original).

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accident occurred between defendant's Mack truck and plaintiff's private automobile, MetLife asserts that the policy does not apply.

This court agrees that by its own language, the PIP policy held by R+L Transfer, Inc. excludes coverage for torts caused by its Mack truck. Therefore, the issue of whether voluntarily-held PIP coverage for commercial vehicles insulates a commercial tortfeasor from liability is not determined today. N.J.S.A. 39:6A-9.1 states that the determination of the amount of recovery is to be made by agreement between the parties, or "upon failing to agree, by arbitration." For that reason, the September 14, 2009 Order directs Protective to permit Met Life to file an arbitration application.

  
RICHARD J. DONOHUE, J.S.C.

*Because of the confusion created by this ct's previous order, ~~this~~ this decision is considered as being vacated by previous order of Sept 14, 2009*