

ORDERED that a copy of the within order shall be served upon all parties within
_____ days of the date hereof.



CHARLES E. POWERS, JR., J.S.C.

Opposed

Unopposed

STAR INSURANCE COMPANY v. MAGEE**Docket No. BER- L-7185-17****RIDER TO THE ORDER DATED APRIL 27, 2018****I. Introduction and Factual Background**

Before the Court is a personal injury suit arising out a motor vehicle accident that took place on November 11, 2015. Plaintiff, Star Insurance Company, insured Norman J. Bird, Jr. on the date of the subject accident. As a result of subject accident, Bird sustained injuries. The present action is brought by Plaintiff as subrogee of Bird's employer, Excavating Materials & Equipment, Inc., against Dylan Magee, Catherine Magee, and Geico Insurance Company (collectively, "Defendants"). Defendants allege that Plaintiff is subject to the limitation on lawsuit tort threshold, known as the verbal threshold pursuant to N.J.S.A. 39:6A-8(a), and that Plaintiff has failed to establish the existence of a significant disfigurement, significant scarring, or a permanent injury as a result of the accident as required by statute. Plaintiff rejects that the verbal threshold under the Tort Exemption statute applies, as Plaintiff is seeking relief in the form of reimbursement of medical benefits and wages paid due to Bird's injuries. Defendants move for summary judgment on these grounds.

II. Legal Analysis**a. Summary Judgment Standard**

New Jersey's standard for summary judgment as set forth in Brill v. Guardian Life Ins. Co. Am., 142 N.J. 520, 540 (1995) entitles a movant to summary judgment if the adverse party, having all facts and inferences viewed most favorably towards it, has not demonstrated the existence of a dispute whose resolution in its favor will entitle him to judgment. A motion for summary judgment

must be granted if the pleadings, depositions, answers to interrogatories and admissions on file, together with the affidavits, if any, show that there is no genuine issue of material fact challenged. R. 4:46-2(c); Brill, 142 N.J. at 528-29. Bare conclusions in the pleadings without factual support in affidavits will not defeat a motion for summary judgment. Brae Asset Fund, L.P. v. Newman, 327 N.J. Super. 129, 134 (App. Div. 1999).

Brill brought New Jersey summary judgment practice in line with the federal summary judgment standards enunciated in Anderson v. Liberty Lobby, Inc., 477 U.S. 242 (1986), Celotex Corp. v. Catrett, 477 U.S. 317 (1986) and Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574 (1986). The standard requires a “kind of weighing that involves a type of evaluation, analysis, and sifting of evidential materials,” Brill, 142 N.J. at 536, which is the same type of evaluation, analysis, and sifting of evidential matters that is required when deciding a motion for directed verdict following the close of plaintiff’s case. Id. at 540.

However, New Jersey Courts have held that summary judgment is inappropriate prior to the completion of discovery. Wellington v. Estate of Wellington, 359 N.J. Super. 484, 496 (App. Div. 2003), cert. denied, 177 N.J. 493 (2003); see also Crippen v. Cent. Jersey Concrete Pipe Co., 176 N.J. 397, 409-10 (2003); Laidlow v. Hariton Mach. Co., 170 N.J. 602, 619-20 (2002). But, a party opposing summary judgment based on incomplete discovery must nonetheless establish, “with some degree of particularity[,] the likelihood that further discovery will supply the missing elements of the cause of action or defense.” Wellington, 359 N.J. Super. at 496 (quoting Auster v. Kinoian, 153 N.J. Super. 52, 56 (App. Div. 1977)). Furthermore, the party “must specify what further discovery is required, rather than simply asserting a generic contention that discovery is incomplete.” Trinity Church, 394 N.J. Super. at 166.

b. Verbal Tort Threshold Application, N.J.S.A. 39:6A-8(a)

Pursuant to N.J.S.A. 39:6A-8(a), as amended by the Automobile Insurance Cost Reduction Act (AICRA), a plaintiff seeking non-economic damages from an alleged automobile tortfeasor must show that his or her bodily injuries fall within one of the following six categories to sustain such an action: 1) death; 2) dismemberment; 3) significant disfigurement or significant scarring; 4) displaced fractures; 5) loss of fetus; or 6) a permanent injury within a reasonable degree of medical probability other than scarring or disfigurement. N.J.S.A. 39:6A-8(a). The statute provides that “[a]n injury shall be considered permanent when the body part or organ, or both, has not healed to function normally and will not heal to function normally with further medical treatment.” N.J.S.A. 39:6A-8(a). “Noneconomic loss’ means pain, suffering and inconvenience.” N.J.S.A. 39:6A-2(i).

Here, even an informal reading of Plaintiff’s Complaint shows that Plaintiff Star Insurance is seeking recovery of the cost of medical benefits and lost wages covered by Plaintiff’s workers’ compensation policy. Plaintiff does not need to provide evidence of an injury that falls within a certain category under N.J.S.A. 39:6A-8(a).

To the extent that some worker’s compensation subrogation claims are subject to the verbal threshold under the statute, the case here is distinguishable. Here, the losses paid by Plaintiff were not compensable under the PIP benefits scheme, as the vehicle he was in at the time of the subject accident was a commercially-owned vehicle. N.J.S.A. 39:6A-2(a) (defining “automobile” as a private passenger automobile). As Bird was not entitled to PIP benefits, Plaintiff properly recovered under worker’s compensation benefits provided by Plaintiff. Continental Ins. Co. v. McClelland, 288 N.J. Super. 185 (App. Div. 1996) (clarifying the relationship between the lien section of the worker’s compensation statutes and the verbal threshold statute). Further, the Courts have found that the legislature did not intend for AICRA to limit recovery rights in the Worker’s

Compensation Act. Lambert v. Traveler's Indem. Co. of Am., 447 N.J. Super. 61, 75 (App. Div. 2016).

III. Conclusion

For the aforementioned reasons, Defendants' Motion for Summary Judgment is DENIED.